

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HOWARD & ASSOCIATES, P.A.,	)	12-MD-2323
	)	
Plaintiff,	)	(Heard via Zoom)
	)	
vs.	)	
	)	
	)	
JESSIE SMALL,	)	Philadelphia, PA
	)	July 7, 2020
Defendant.	)	9:54 a.m.

TRANSCRIPT OF ATTORNEY LIEN HEARING  
BEFORE THE HONORABLE DAVID R. STRAWBRIDGE  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Exhibit

3

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I N D E XARGUMENT:PAGE

By Mr. Howard

3, 106, 113

By Mr. Shenag

14, 109

WITNESS:DIRECTCROSSREDIRECTRECROSS

Amir Shenag

47/How

Renessa Small

65/She

86/How

EXHIBITS MARKED:IDENT.EVID.

Exhibit 1 (Document refers to termination)

84

THE COURT

Colloquy

115

**\*Inaudibles due to static or blips in audio on Zoom.**

1 (The following was heard via Zoom at 9:54 a.m.)

2 THE COURT: Mr. Shenaq is on? Sir, yes?

3 MR. SHENAQ: Yes, Your Honor.

4 THE COURT: Mr. Howard? Good morning, Mr. Howard.

5 MR. HOWARD: Good morning.

6 THE COURT: And just in terms of other faces, my law  
7 clerk, who is the Zoom master for this in my office, deals  
8 with all these Zoom things, Alisha is on. You'll see her  
9 face. And Mr. and Mrs. Small. Good morning.

10 ALL: Good morning.

11 THE CLERK: Judge, if I may interrupt quickly, I  
12 think your video is not on.

13 THE COURT: Oh, me? My video is not on. Okay.

14 MR. SHENAQ: Yeah.

15 THE COURT: There you go. So now they can see me,  
16 instead of just hear me.

17 THE CLERK: Can you click it one more time? There  
18 you go.

19 THE COURT: We got that?

20 THE CLERK: Uh-huh.

21 THE COURT: All righty. Let's see who else we have  
22 here.

23 UNIDENTIFIED COUNSEL: Your Honor, as I mentioned,  
24 there are a few law students, and thank you for not objecting  
25 to their participation. These are students who've just

1 finished their first year of law school and are spending time  
2 with me. Unfortunately, it's all remote but spend time with  
3 me on a number of different things that I handle.

4 THE COURT: Okay. So this morning we are here in  
5 order to resolve a question with respect to the question of  
6 allocation of attorneys -- the attorneys fee associated with  
7 the claim that was presented to the NFL through the claims  
8 administrator by Mr. Small and certain claims represented by  
9 Mr. Howard -- apparently, at some point represented by Mr.  
10 Howard and in connection with Mr. Shenaq. And then  
11 subsequently -- and as I understand it, in December of 2019 --  
12 sorry, September of 2019, more fully represented by Mr.  
13 Shenaq, when there was a termination notice with respect to  
14 Mr. Howard.

15 So, Mr. Howard, we -- I see you here today as the  
16 individual who has asserted the lien. I see you, therefore,  
17 as a moving party and also would point out that you also made  
18 a request -- you're the individual who made the request -- I'm  
19 not criticizing you in any way at all but made the request for  
20 the hearing, which we have now granted. I would like to at  
21 least try to make clear, if I can, the documents that have  
22 been submitted. And, Mr. Howard, this is not going to have  
23 any impact upon anything that I do, but we didn't get from you  
24 a Statement of Dispute, but we got your position in the  
25 response to Mr. Shenaq's Statement of Dispute. And in

1 connection with that, you did append certain exhibits which I  
2 believe were characterized in your documents by letters  
3 Exhibits A through F.

4 And then, as to Mr. Shenaq, there were exhibits that  
5 were presented at the time that he submitted his Statement of  
6 Dispute of which I have it that there were three. And then  
7 Mr. Shenaq, on behalf of Mr. Smalls (sic), further appended  
8 Exhibits 1 through 11 at the time that he responded to the  
9 notification that this hearing was going to take place and an  
10 indication on our part that we would be prepared to accept  
11 certain hearings -- certain exhibits -- if exhibits wanted to  
12 be offered, the opportunity for them to be -- to be offered.  
13 And we have, I believe, 11 exhibits that fit within that  
14 category. But those are all things that have been before us.  
15 I know that there have been certain objections with respect to  
16 some exhibits.

17 I want to hear from the moving party -- I mean,  
18 initially, with you, Mr. Howard, and then from Mr. Shenaq.  
19 And you want to cover what's in the exhibits, it's up to you,  
20 any way you want to make your presentation. Considering that  
21 I'm here for the purpose of residing over these proceedings  
22 and ultimately to make a recommendation to Judge Brody, since  
23 this is not a consent case for me to make final resolution.  
24 It is to make a recommendation upon certain findings of fact  
25 and is -- as I think you've indicated, Mr. Howard -- although

1     you did ask for the hearing, you did indicate, also, as I  
2     understand it, that you didn't believe there were significant  
3     disputes of fact. I think from the way in which you looked at  
4     the -- at the case, that may well be -- that may well be the  
5     case.

6             Okay. We'll leave that -- we'll leave that for now,  
7     but I'm going to ask you to -- well, I'm going to indicate,  
8     broadly speaking, I have the exhibits. I've looked at certain  
9     of the exhibits. Varying degrees of intensity, quite frankly.  
10    Those exhibits that appear to me to be relevant and might  
11    potentially have some bearing will be identified. There will  
12    be other exhibits that will have limited bearing, but I'm not  
13    going to exclude them. I want to hear from Mr. Shenaq and  
14    even from yourself as to why you think certain exhibits ought  
15    to be offered and were not offered.

16            But enough of that. So I also would ask, if we may  
17    -- Mr. Howard, no offense meant. I'm going to ask Mr. Shenaq  
18    the same thing. To the extent that the presentation seems to  
19    me will necessarily have to have certain factual references to  
20    it, there may be some disagreement between you and Mr. Shenaq  
21    as to certain facts. I'm going to ask you, Mr. Howard -- and  
22    I must ask Alisha to remind me when I go to Mr. Shenaq -- ask  
23    Mr. Shenaq, then ask Mr. and Mrs. Smalls. If you'd be good  
24    enough, please, to raise your right hand. And then, Mr.  
25    Howard, are you able to hear me? (No audible response) So if

1       you'd raise your right hand, sir.

2                   TIMOTHY HOWARD, PLAINTIFF, SWORN

3                   THE COURT:   Okay.   Thank you very much, Mr. Howard.  
4       Okay.   You're on.

5                   MR. HOWARD:   Well, Your Honor, I don't think this is  
6       that complicated.

7                   THE COURT:   (Laughter)   You know, how would I make  
8       things more complicated.   That's not a good trait to have.

9                   MR. HOWARD:   Right.   So we entered a contract on  
10       December 6, 2016.   We represented the client until September  
11       of 2019; for two years and nine months.   We did preliminary  
12       testing with both Dr. Koberda and Dr. -- I mean, Koberda and  
13       another doctor out of Orlando.   And they're both MAF approved  
14       and certified.   We paid for all costs, we paid for all travel,  
15       we helped the client dealing with emotional issues, dealing  
16       with suicidal ideations, dealing with Workers' Compensation,  
17       dealing with Disability.   We had staff that was always on-  
18       call, driving to his home, counseling him.   We have emails  
19       non-stop going on because this client had a lot of issues,  
20       both, with his wife's concern about Disability.   Both of them  
21       were out of work for a long time.   They have a child that has  
22       autism, and they had a hard time managing all those pieces, as  
23       well.   He was -- he had lost his job at Florida A&M, and that  
24       was challenging for him, as well.

25                   We had various meetings in the office.   And we

1 eventually found co-counsel. They had a lot of success  
2 experience -- Mr. Shenag. We entered into -- invited him  
3 onboard with about 320 clients in April and May of 2018, and  
4 we proceeded to pay for all of this testing costs. Mr. Shenag  
5 has paid for nothing, has no investment of capital at all in  
6 the process. He has about two paralegals that does work  
7 administratively, and that's the full extent of the staff.  
8 Whereas, we have been -- any need that Mr. Small has had over  
9 the two years and nine months we've been there servicing that.  
10 The records prove that.

11 And we finally got an award letter in around May of  
12 2019. It took awhile because his condition kept on  
13 deteriorating. He went from a level 2.0 to a Parkinson's.  
14 And with the Parkinson's, his award was ultimately, I think,  
15 1.9 million. Everything was fine. Apparently, both Mr. Small  
16 and some of his cohorts, Myron Guyton and I think another  
17 gentleman, Aaron Jones, I think it is, they wanted a discount  
18 on their fees. And we had never agreed to give them a  
19 discount on the fees. And -- but now I could not -- I was not  
20 opposing the discount; it was fine with me. But I could not  
21 require my co-counsel to do that, and I couldn't require the  
22 advanced lender to do that. So we were not able to do a  
23 discount on the fees. And once we were not able to do a  
24 discount on the fees, that's when he dropped us, five months  
25 after the award letter, five months after the contingency had

1 already been perfected.

2 Under Florida law, you cannot -- once the -- the  
3 contingency takes place, you cannot, after the fact, drop the  
4 attorney and say you're not entitled to pay them. If that's  
5 the case, every client in the world would wait till they got  
6 their \$2 million judgments, and the attorney spends all the  
7 money and they drop them and not pay the fee. It's -- that's  
8 why the law is the way the law is. If that happens in real  
9 estate, you don't close the deal and then say I'm not going to  
10 pay you the commission. And you don't complete the legal  
11 representation and went across the line, make sure his family  
12 is secure with 1.9 million recovery and then after that's  
13 done, five months later say we're not going to pay you a fee.

14 It's not that complicated. There's a lot of smoke  
15 out there because people have attacked me, but they're all  
16 unproven allegations and those are all fading away bit by bit.  
17 And smoke does not mean there's fire. It's just smoke upon  
18 smoke. I'm used to being attacked. I've been attacked my  
19 entire career. We deal with -- that happened in a tobacco  
20 case 20 years ago. They said I was a rat, even though we won  
21 the largest cases in the world, and we all got paid very well  
22 in the process. So being attacked is not the issue. Ad  
23 hominem attacks are basically what you're seeing from both Mr.  
24 Shenaq and the -- and the press. And the last I heard, ad  
25 hominem does not make truth, it's just ad hominem. And so I'm

1 going to go forward. You can call me a snake, you can call me  
2 a worm, you can call me whatever you want to call me, but I'm  
3 going to stand for what I've done, what we do and keep on  
4 doing truth. And that's it.

5 THE COURT: I call you only a counsel who is seeking  
6 relief he's entitled to with respect to the percentage of the  
7 award and the enforcement of the agreement that you have.

8 MR. HOWARD: Correct.

9 THE COURT: Let me -- let me put out a couple  
10 things, if I may. And by the way, as part of the process  
11 here, I do think Mr. Shenag should have the opportunity to ask  
12 questions of you if he cares to do so with respect to any  
13 factual references, and you of him when he makes certain  
14 factual references.

15 MR. HOWARD: Yeah.

16 THE COURT: But I would ask you whether or not you  
17 have reviewed any of the opinions that have come out from this  
18 particular MDL referring to the circumstances of how it is  
19 that counsel fees and contingency arrangements are ultimately  
20 handled. There's a -- there's a -- civil opinions, the --  
21 sort of the motherlode of the big opinions was in January of  
22 2019, when citing a case called McKenzie, the Third Circuit,  
23 which we believe from, I think, what you've found in that  
24 opinion and is -- I would consider to be guiding principle --  
25 perhaps a guiding principle for me, even here, would be that

1 the consideration with respect to choice of law, as it were,  
2 indicates that the -- that the issue about the opponent  
3 counsel fee needs to be -- needs to be resolved by virtue of  
4 Third Circuit law. And Third Circuit law, essentially, says  
5 we take a look at the situation, the contingency fee contract  
6 that was executed, and then compare it to the time that the --  
7 that the situation either has become full -- all the way  
8 through the process or you've been -- or you've been  
9 terminated. And as you point out, you were terminated when  
10 there had been a notice of monetary award, as I understand it.  
11 Although I do understand, also, that the claim was in audit at  
12 the time that the second audit was involved in this claim, and  
13 that it was not until December of 2019, where, finally, the  
14 award came to be paid. Is that --

15 MR. HOWARD: Yeah, there was an issue with the  
16 dollar amount, so I think it was sometime in late 2019.

17 THE COURT: Yes, but subsequent to your being  
18 terminated?

19 MR. HOWARD: Yeah, three months later. Yes,  
20 correct.

21 THE COURT: Okay. All right. So -- and at that  
22 point there was -- at least the audit process was -- had not  
23 yet been completed up to that time. Okay. So just a narrow  
24 -- a narrow point. But I guess what I'm saying to you is that  
25 it may very well be that the resolution of this is one that we

1 -- I feel that we have to look at as a Magistrate Judge doing  
2 this recommendation for Judge Brody based upon the McKenzie  
3 analysis and lots of different factors that go into this, some  
4 of which are the factors that you would ordinarily expect.

5 You know, at the time that you came into the case,  
6 obviously, the -- the class action had been -- the class had  
7 been formed, the administrative process was just getting  
8 geared up, registrations were being accepted in early of 2017,  
9 I believe it was. And so that when -- you know, when you came  
10 in, it was really more of an administrative process as opposed  
11 to an (inaudible) with the earlier lawyers who became class  
12 counsel. It's not a knock, it just happened to be the way  
13 that -- the way that it was. But we did a lot of analysis  
14 with respect to all of that. All right. Thank you for that  
15 presentation.

16 Mr. Shenaq, is there anything that you would like to  
17 ask Mr. Howard at this time?

18 MR. SHENAQ: No, Your Honor, I don't have any  
19 questions for Mr. Howard. Although, at some point I would  
20 like to give the Smalls -- in particular, Mrs. Small -- an  
21 opportunity to be able to provide some of their perspectives  
22 surrounding simple terms.

23 THE COURT: Sure. I will certainly -- you'll  
24 certainly have that -- certainly have that opportunity.

25 Okay. So, Mr. Howard -- so, I hear what you -- I

1     hear what you have to say and I -- it's pretty much consistent  
2     with the way you made it out for me in the -- in the paper  
3     documents, maybe feeling more of a matter of interpretation of  
4     the -- of the legal question would be the principal -- I guess  
5     the principal concern sort of raised by this. But is there  
6     anything else that you'd like to say or to add, given the  
7     remarks that I've made, or anything else?

8             MR. HOWARD: No, Your Honor, we -- I've not gone  
9     through the McKenzie standards, but what I need to articulate  
10    was that you look at the time of representation and the amount  
11    of time that I was there and we -- you know, again, we just  
12    started representation of December of 2016, and we actually  
13    still represented a client up to September of 2019. And, in  
14    fact, you know, we argue that even Shenaq -- we paid for  
15    Shenaq's costs (inaudible) we're still representing Mr. Small,  
16    even through Shenaq. So -- but for us there is no Amir Shenaq  
17    involved in this process. So -- and we're still paying for  
18    the costs of this case, and we paid for all the costs of all  
19    Shenaq's testing and work that he does for our clients. Joint  
20    clients, in fact. We only represented --

21            THE COURT: Joint clients?

22            MR. HOWARD: Correct.

23            THE COURT: Okay. And was that -- was that  
24    arrangement committed to a written form?

25            MR. HOWARD: Yes, it is, Your Honor. We have a

1 joint -- prosecution joint co-counsel arrangement that we're  
2 still complying.

3 THE COURT: Okay. All right. Let's hear from Mr.  
4 Shenaq.

5 MR. SHENAQ: Your Honor, thank you. Amir Shenaq,  
6 for the record, co-counsel --

7 THE CLERK: Swear him in.

8 THE COURT: Oh. Thank you, Alisha.

9 I warned everybody this might happen.

10 AMIR SHENAQ, DEFENSE COUNSEL, SWORN

11 THE COURT: All right. Thank you, sir.

12 MR. SHENAQ: Thank you, Your Honor. On behalf of  
13 Jessie Small, we're here today asking the Court to grant  
14 relief to discharge Howard & Associates' attorney lien in its  
15 entirety and only award those expenses to Howard & Associates  
16 that this Court deems reasonable and appropriate. Your Honor,  
17 it's our contention that there are no such expenses under  
18 these circumstances. The medical doctors that Howard &  
19 Associates engaged at the beginning of Mr. Small's NFL  
20 concussion claim process could not even render a diagnosis for  
21 Mr. Small that would even entitle Mr. Small to submit a claim  
22 into the settlement program. The methods in which the doctors  
23 used as far as the evaluation of Mr. Small were suspect. The  
24 manner in which the reports were procured were highly suspect,  
25 as well.

1           In addition to that, Your Honor, many of these  
2       expenses were not actually advanced by Howard & Associates but  
3       rather by a hedge fund that Howard & Associates controlled.  
4       Mr. Small had no privity, no agreement with any hedge fund to  
5       advance expenses on behalf of this case. As you've  
6       recognized, Your Honor, in your June 4th holding, it is the  
7       principles of McKenzie that guides the Court as it relates to  
8       adjudication of attorney lien disputes such as this one.

9           In addition to that, in particular, Your Honor, the  
10      June 4th opinion also acknowledged that a private agreement  
11      amongst attorneys was not relevant as it relates to the  
12      analysis of McKenzie. Looking through the lens of McKenzie  
13      and applying these facts at hand, Your Honor, the facts  
14      strongly support our contention that the entirety of the  
15      attorney fee in this case should be awarded to Shenaq, P.C.,  
16      and any expenses that have been withheld by the claims  
17      administrator on the Smalls' claim should, in fact, be  
18      refunded to the Smalls, given that there is no -- they were  
19      not reasonable under the circumstances.

20           And, Your Honor, you know, even setting aside the  
21      fact that we do know that Florida law does not govern this  
22      dispute -- even taking Mr. Howard's argument and even assuming  
23      that Florida law is applicable here, and even assuming that  
24      the Florida case that they cite is applicable, Mr. Howard  
25      would still not be entitled to any contingency fee. There was

1 no such contingency, Your Honor, that had taken place prior to  
2 Mr. Small's termination of Howard & Associates on September  
3 20, 2019. In fact, Mr. Small was far from receiving any of  
4 the benefits under the settlement, agreeing that Mr. Small's  
5 claim was in the midst of a second audit, Your Honor.

6 An audit process completely suspends any sort of  
7 monetary award and, in fact, retracts a monetary award and  
8 post an audit, Your Honor. The claim is reevaluated and an  
9 award may be reissued, assuming that the audit process was  
10 navigated and completed successfully. Mr. Small had an  
11 initial audit of his claim back in early 2019, Your Honor.  
12 That audit process spanned seven months. You know, at the  
13 outset we're never given a finite time frame of how long an  
14 audit would last. The scope of the audit and the purpose of  
15 the audit, as Your Honor is probably aware, is to ensure the  
16 veracity of claims that have been filed into the settlement  
17 program. And that requires a settlement class member to  
18 provide written discovery responses in the form of responses  
19 to interrogatories, document production requests, until the  
20 claims administrator is satisfied that they have all the  
21 information they need to verify the veracity of a particular  
22 claim.

23 What's, you know, notable in this circumstance, Your  
24 Honor, is that the audit of Mr. Small's claim for the  
25 Parkinson's claim was actually triggered by medical doctors

1     that Howard engaged -- the conduct that Howard engaged in with  
2     these medical doctors in 2017. None of those medical reports  
3     had any bearing to the Small's Parkinson diagnosis for the  
4     claim that was under consideration, yet -- or the very reason  
5     why Mr. Small's claim was held up in audit a second time.  
6     Even assuming, Your Honor, that a retired player successfully  
7     navigates the audit process, in the case of Mr. Small, who was  
8     diagnosed in his early '50s with a diagnosis as severe as  
9     Parkinson's, would likely face -- and there's a high risk of  
10    dealing with an NFL -- you know, given the severity of his  
11    diagnosis that he alleged at such a young age and the high  
12    value of any monetary award the NFL would have had to pay,  
13    Your Honor, we were -- we were prepared to brief and respond  
14    to any such NFL appeal. And as you've acknowledged, that is a  
15    significant risk to the progression and the ultimate receipt  
16    of any benefits under the NFL Concussion Settlement agreement  
17    and obviously requires skilled advocacy in order to  
18    successfully oppose an appeal filed by the NFL and the lawyers  
19    of Paul, Weiss. Fortunately, that didn't happen here, but  
20    that was certainly a risk that we faced and another hurdle to  
21    any sort of contingency that may have occurred.

22             In addition, Your Honor, if we look even closer at  
23    the fee agreement that the Smalls entered into with Howard &  
24    Associates in December of 2016, there is a specific provision  
25    that outlines what happens when the attorney is discharged for

1 representation. And specifically, in that document it  
2 provides that Howard & Associates is entitled to a lien for  
3 the expenses incurred in connection with the representation,  
4 as well as a lien for the time that they spent on the case.  
5 Your Honor, it's our contention that the time Howard &  
6 Associates spent on the case was *de minimis* at best, and the  
7 conduct of Howard & Associates early on in Mr. Small's claim  
8 process undermine the prospects of Mr. Small getting recovery.  
9 And, therefore, it's our position that the time they spent  
10 provided absolutely no value to the Smalls with respect to the  
11 claim that they were ultimately paid for.

12 And if you look even further, Your Honor, in Howard  
13 & Associates cumulative Exhibit A, which referenced 1,800  
14 pages of documents to support the notion that they actually  
15 did any meaningful work to the Smalls, it contained  
16 approximately 1,400 pages of duplicative material, of which  
17 none had any bearing to the claim that Mr. Small was  
18 ultimately paid for. However, if you did closely examine what  
19 was in the contents of that production which Howard &  
20 Associates produced to justify the work they did for Mr.  
21 Small, there were some very, very concerning things in that  
22 production, Your Honor. And I would like to introduce Exhibit  
23 2, to show the sort of work that Howard & Associates alleges  
24 that they have performed and actually stated that they  
25 performed. Because this is not the nature of legal work that

1 -- you know, that any lawyer, you know, should be engaging in.  
2 I'm happy to do a screen share, Your Honor, to show Exhibit 2.  
3 Or alternatively, I can read for the record the contents of  
4 Exhibit 2.

5 THE COURT: Is it Exhibit 2 of the -- you submitted  
6 at the time of your statement of dispute?

7 MR. SHENAQ: No, Your Honor, these are the 11  
8 exhibits that we requested the Court admit into the record for  
9 purposes of the hearing today.

10 THE COURT: So Exhibit 2 then is a portion of what  
11 was in the cumulative Exhibit A that was submitted by Mr.  
12 Howard?

13 MR. SHENAQ: Yes, Your Honor. However, you know, we  
14 want to flag certain items, given the voluminous production  
15 and the fact that certain documents would likely be missed if  
16 they were not specifically flagged.

17 THE COURT: Yes. Okay. Well, I appreciate that.  
18 And we did take note of that. I think Alisha may have it up  
19 on part of the screen or screen share. If you want to go  
20 ahead -- I'm out of my league now in terms of how this works.

21 MR. SHENAQ: Sure.

22 THE COURT: If you want to go ahead and screen  
23 share. You're saying what I will then see, and everybody in  
24 the conference will see, will be a document, and you'll be  
25 able to speak and address issues in the process?

Shenaq - Argument

20

1 MR. SHENAQ: Yes, Your Honor.

2 THE COURT: All right. Let's give that a try.

3 MR. SHENAQ: Alisha, it shows that the host has  
4 disabled screen share. Is it possible to --

5 THE COURT: It's very possible.

6 MR. SHENAQ: Okay.

7 THE CLERK: Yeah. So I think that I will have to do  
8 it then --

9 MR. SHENAQ: Okay.

10 THE CLERK: -- if that's okay?

11 MR. SHENAQ: No problem.

12 THE CLERK: Okay.

13 MR. SHENAQ: Okay.

14 THE CLERK: I think you all see it.

15 MR. SHENAQ: Okay. Your Honor, Exhibit 2 reflects  
16 an email that was produced by Howard & Associates in their  
17 cumulative Exhibit A, which was part of their response to  
18 Shenaq, P.C.'s Rule 23 Statement of Dispute. The subject of  
19 the email, Your Honor, is "F-J report names." It was an email  
20 from Erin Murphy, who was an employee and I believe an  
21 attorney of Howard & Associates, to another individual of  
22 Howard & Associates, Duante Smith, dated Thursday, August 31,  
23 2017. The email states, "Hey, Duante, here are some more  
24 names for you to type a report for. All Ford-Johnson or  
25 Hopper reports can be found in the one drive." There are a

1 list of a number of names, including my client, Jessie Small,  
2 in this email. You know, what is very peculiar, Your Honor,  
3 is that law firms typically -- especially in this settlement,  
4 do not type reports for medical doctors. You know, that is,  
5 you know, one thing that was highly concerning.

6 Alisha, can you flip to the next email?

7 THE COURT: Before you -- before you do that, Mr.  
8 Shenaq, if you scroll down, does this document have a Bates  
9 number on it?

10 MR. SHENAQ: It does. 1290 is --

11 THE COURT: Yes, make sure they're all uniquely  
12 identified. Okay.

13 MR. SHENAQ: Okay. Bates number 1290.

14 THE COURT: Okay.

15 MR. SHENAQ: Alisha, could you flip to the next  
16 email? Thank you.

17 THE COURT: Give us the Bates number on that.

18 MR. SHENAQ: This is Bates number --

19 Alisha, could you scroll to the bottom?

20 -- 1202, Your Honor.

21 THE COURT: Okay.

22 MR. SHENAQ: This is another email from Erin Murphy  
23 to Duante Smith, both of whom are Howard & Associates  
24 employees. This was dated September 13, 2017. Although it  
25 does not appear particularly -- it doesn't reference Jessie

1 Small, it was part of Howard's production. It states, "Hey,  
2 Duante, you can do the reports for Eric Joyce and Darryl  
3 Ashmore. Both should be in the one drive. If you have any  
4 questions, please let me know."

5 Again, it's concerning that the office appears to be  
6 writing reports on behalf of medical doctors who were  
7 supposedly tasked with evaluating these retired players and  
8 also preparing, you know, expert reports to support any claim  
9 of diagnosis.

10 Alisha, can you flip to the next email as well,  
11 please?

12 This one is Bates 1203, Your Honor. This email is  
13 from Duante Smith to Erin Murphy, dated Wednesday, September  
14 13, 2017. Your Honor, this email is a link, which, at the  
15 time of production, if you were to click on the link, would  
16 actually take you to a share folder drive that contained  
17 approximately 80 medical reports that appears to be what  
18 Howard & Associates' office used to either write reports,  
19 modify, or alter reports. I'm not sure what but, you know,  
20 that was the link.

21 Alisha, could you flip to the next document?

22 Okay. Your Honor, this document was not in Howard's  
23 production, but this is a screen shot, Your Honor. When you  
24 do click the link -- this is what one sees when you click the  
25 link. For the record, the title of the folder is called "NFL

1 Master Player File pdf-word." Your Honor, I am not a computer  
2 expert, however, you know, the titling of this folder, "pdf-  
3 word" implies to me that these were pdf documents converted to  
4 Word document. Typically, what these (inaudible) as you can  
5 imagine, this is highly, highly suspect. And this was the  
6 basis for the second audit that the Smalls had to endure yet  
7 again. All of -- all of this, again, was before my firm got  
8 involved in the case.

9 THE COURT: Hang on just a minute. This comes up as  
10 part of your Exhibit 2, which came from his Attachment A, but  
11 you're saying that this particular page is not part of that  
12 exhibit.

13 MR. SHENAQ: Well, Your Honor, it is. It is because  
14 Howard & Associates provided a link. And that link, when you  
15 clicked on it, it would take you to that particular folder.  
16 And --

17 THE COURT: Oh, I see.

18 MR. SHENAQ: -- that was a screen shot to preserve  
19 the contents of the folder before any action was taken by  
20 Howard & Associates to remove those files. So to avoid any  
21 inference or suggestion that this didn't exist, I wanted to  
22 preserve it for the record, Your Honor.

23 THE COURT: I understand.

24 MR. SHENAQ: Alisha, could you flip to the next  
25 page, please?

1           This also shows, Your Honor -- same page -- shows  
2           that the owner of the ShareFile is Kyla DeRobbio, who is  
3           another employee of Howard & Associates.

4           Next page, Alisha, please.

5           Okay. Your Honor, this is Bates number 628, Your  
6           Honor. And this was another document that was part of Howard  
7           & Associates production. This is an email from Tim Howard  
8           personally to a number of individuals, including an MAF-  
9           approved neurologist who supposedly evaluated Mr. Small in  
10          late 2017. You know, there are some concerning things that I  
11          wanted to flag for you, and I'm going to read this for the  
12          record, Your Honor. It says, "Dear Tara, dates all look good.  
13          This is the best approach. Dr. Sadek's report coming about a  
14          month later works."

15          I'm going to skip the next paragraph. The third  
16          paragraph, Your Honor, says, "Another item that we need to  
17          focus on for every claims is to ensure that employment  
18          comments are consistent in the underlying CDR and  
19          neuropsychological reports and Dr. Sadek's report all showing  
20          that there is no current employment. Note, if there is any  
21          employment, the claim will be denied."

22          Your Honor, to suggest that the doctor take a one-  
23          size-fits-all approach and ignore the facts and the  
24          circumstances of a individual player and take an approach that  
25          tries to -- you know, try to beat or cheat the settlement

1 process is very concerning, Your Honor. And this is the type  
2 of work that Tim Howard and his firm alleges that they  
3 performed on behalf of the Smalls that they believe led to the  
4 results in Mr. Small's case. None of these medical records,  
5 Your Honor, were utilized for the purposes of Mr. Small's  
6 Parkinson's claim, yet these were the very things, Your Honor,  
7 that served as a detriment to Mr. Small moving his case  
8 forward.

9 THE COURT: Let me just interrupt you for a second  
10 and ask you something about the way in which the information  
11 was utilized here. And I take your point with respect to what  
12 you see as to circumstances of this looking rather suspicious,  
13 but was the information at this stage, back in 2017, to your  
14 knowledge, utilized at the time that the claim -- the first  
15 claim was put in, which was later withdrawn? And I understand  
16 that to be sometime in the spring of 2018, close in time to  
17 when it was that you effectuated an association with Mr.  
18 Howard?

19 MR. SHENAQ: No, Your Honor, none of these medical  
20 reports were utilized in any manner for the Smalls' first  
21 claim or the second claim. In fact, when I -- when I was  
22 associated into the case by the Smalls, Your Honor, the Smalls  
23 had no claim. No claim had ever been filed on their case. I  
24 started from scratch with evaluations with new MAF  
25 neurologists and a VAP-approved neuropsychologist, Dr.

1 Randolph Evans, and a neuropsychologist -- the name escapes me  
2 at the moment, Your Honor. But both of those physicians were  
3 approved and performed an evaluation from scratch, without  
4 utilizing any of this prior information.

5 THE COURT: Okay. Is that including anything that  
6 would have come from Dr. Lloyd or Dr. Morgan?

7 MR. SHENAQ: Your Honor, we did not provide this  
8 documentation. It is our understanding that Dr. Sadek had  
9 uploaded this documentation into the NFL Concussion Settlement  
10 portal, and this documentation was obtained by the claims  
11 administrator during the course of the first audit of Mr.  
12 Small.

13 THE COURT: And that was -- that was -- what was --  
14 the result of that audit was what?

15 MR. SHENAQ: Your Honor, there was never a  
16 completion or culmination of that audit. That audit went away  
17 when we took steps to withdraw Mr. Smalls' claim --

18 THE COURT: Okay.

19 MR. SHENAQ: -- because we obtained, you know, a  
20 diagnosis of Parkinson's for him based upon, you know, records  
21 that I had uncovered when reviewing some of his primary care  
22 doctor's records.

23 THE COURT: Okay. So you're saying it was your work  
24 that brought about that particular claim? And I believe that  
25 claim was for cognitive impairment 2.0; is that right?

1 MR. SHENAQ: Yes, Your Honor, 100 percent. 100  
2 percent. And, you know, at any point, Your Honor, I'm happy  
3 to have Mrs. Small opine because, you know, her perspective, I  
4 think, is going to be very helpful in aiding --

5 THE COURT: What I just get that that was -- that  
6 was based upon physicians that were providing information --

7 MR. HOWARD: Your Honor, we --

8 THE COURT: -- is that right?

9 MR. SHENAQ: I'm sorry --

10 MR. HOWARD: -- lost -- we lost connection about ten  
11 minutes ago.

12 THE COURT: Oh.

13 MR. HOWARD: Five minutes ago. We're back online.  
14 We had a -- we had a break. I left at the medical reports  
15 discussion dealing with the skipping of paragraph 2. So the  
16 inference was "all showing" there's no current -- and it's a  
17 -- suddenly what happened. And that's where I broke off,  
18 would be skipping paragraph 2 and going to the "all showing"  
19 there's no current employment.

20 THE COURT: Yes. Okay. Well, we got to -- we got  
21 to fix that. Alisha, can you -- are you able to see what  
22 happened here?

23 THE CLERK: Can you hear me?

24 THE COURT: Yes, I can hear you.

25 THE CLERK: I think he just had an internet issue.

1 I think everyone else was still here.

2 MR. HOWARD: Right. Yeah, there was -- we got a lot  
3 of rain here and the wi-fi dropped -- shut down, so I had to  
4 go into another Zoom.

5 THE COURT: Okay. So, Mr. Howard -- and -- was the  
6 document that is now on the screen -- this "Dear Tara"  
7 document, apparently from you, was that where -- is that where  
8 you were at the time that you lost connection?

9 MR. HOWARD: Correct. Mr. Shenaq had skipped  
10 paragraph (inaudible -- static) to paragraph 3. And there's  
11 the word "all showing" for employment that was referring to  
12 the two reports. But that's where I left off.

13 THE COURT: All right. So pick up at that point,  
14 Mr. Shenaq.

15 MR. SHENAQ: Yeah.

16 THE COURT: Can we hear -- I'm not sure if you can  
17 do this, but is there a way in which you can visually or at  
18 least send a text, if Alisha would be good enough to provide  
19 her text number, that if you have an interruption again, Mr.  
20 Howard, we could know it right away? If visually you can give  
21 her a wave or send her a text message?

22 MR. HOWARD: Yeah, the time that it freezes -- you  
23 can't tell -- you can see my picture, but you'll -- you won't  
24 see me move. So if you have a text number, Ms. Alisha, just  
25 give it to me.

## Shenaq - Argument

29

1 THE CLERK: Sure. (215) --

2 MR. HOWARD: Right.

3 THE CLERK: -- 896 --

4 MR. HOWARD: All right.

5 THE CLERK: -- 8579.

6 MR. HOWARD: All right. Thank you.

7 THE COURT: Okay. Go ahead, Mr. Shenaq.

8 MR. SHENAQ: Yeah. Your Honor, you know, going back  
9 to paragraph 3 of this email from Tim Howard to a number of  
10 individuals, including an MAF neurologist, paragraph 3  
11 provides some context as to Mr. Howard was trying to approach  
12 every claim. Mr. Howard was trying to suggest to the doctor  
13 to ignore the underlying facts and circumstances of each  
14 individual player but take an approach of a one-size-fits-all  
15 and ask that the doctor state that -- for every claim show  
16 that there is no current employment and stress that if there's  
17 any employment, the claim would be denied. I don't know how,  
18 you know, you would characterize that, but that's something  
19 that is highly suspicious and the very conduct that the NFL  
20 claims audit process investigates and seeks to deter. But  
21 this is, you know, highly inappropriate to make this kind of  
22 suggestion.

23 THE COURT: Okay. Go ahead.

24 MR. SHENAQ: That is -- that is pretty much it for  
25 Exhibit 3, Your Honor. You know, I'd also like to, you know,

1 include --

2 Alisha, if we could introduce Exhibit number 3.

3 MR. SHENAQ: Okay. Exhibit number 3, Your Honor, is  
4 Bates number 614 from Howard & Associates cumulative Exhibit  
5 A. This reflects an email from an administrator to an  
6 attorney in Mr. Howard's office named Erin Murphy. And it's a  
7 listing of all messages that Howard & Associates office or  
8 Erin received on a particular day. And this email was dated  
9 January 11, 2018. There was an email -- or, excuse me, a  
10 message left from Ariel from Gibbs & Parnell. They had a  
11 question regarding Mark Word, a former client of Howard &  
12 Associates, in which he is currently being audited. And there  
13 are questions regarding the testing he did when he was our  
14 client. But the relevance of this email, Your Honor, is to  
15 indicate that this -- you know, the particulars of Jessie  
16 Small was not an isolated incidence [sic], but rather  
17 something that the claims administrator was laser focused on  
18 as early as 2018. So any notion or suggestion that my firm  
19 had in any way prejudiced or created an impediment for Mr.  
20 Small is just -- is blatantly wrong.

21 Alisha, I'd like to introduce Exhibit 4 as well, if  
22 you don't mind.

23 Exhibit 4, Your Honor, is an email from the claims  
24 administrator to me on July 15, 2019, regarding certain  
25 anomalies they found in a medical report that was part of the

1 batch of reports that Howard & Associates supposedly wrote the  
2 reports for identifying an anomaly between a Dr. Ford-Johnson  
3 report and a Dr. Lloyd report and asked that my firm explain  
4 the discrepancy. Your Honor, both these physicians were not  
5 engaged by my firm, they were engaged by Howard & Associates  
6 in 2017. But, as you can see, this was part of the audit in  
7 July of 2019 that essentially resulted in the retraction of  
8 Mr. Small's monetary award and required us to, you know, go  
9 through an arduous audit process a second time to try to get  
10 Mr. Small the benefits out of the settlement.

11 Alisha, could you provide --

12 THE COURT: When did that second audit process  
13 commence?

14 MR. SHENAQ: Right around this time, Your Honor.  
15 July 15, 2019, Your Honor.

16 THE COURT: Okay.

17 MR. SHENAQ: Alisha, could you please provide  
18 Exhibit 5?

19 Your Honor, Exhibit 5 is another email sent to me  
20 from the claims administrator regarding Jessie Small's claim  
21 and another settlement class member's claim who saw the same  
22 physicians that Howard arranged for in 2017. There were  
23 questions regarding whether or not Mr. Small was personally  
24 examined by Dr. Lloyd and Dr. Morgan. They were, you know,  
25 obviously very focused on the early testing that Howard &

1 Associates did. Again, none of which had any relation in any  
2 way to a claim of Parkinson's.

3 Alisha, could you introduce Exhibit number 6 as  
4 well, please?

5 Your Honor, Exhibit number 6 is an email from the  
6 claims administrator to myself on December 3, 2019, related to  
7 another settlement class member who was the subject of an  
8 audit. Again, the focus of the inquiry was the testing  
9 performed by Howard & Associates and the experts they engaged  
10 in 2017.

11 Alisha, if you don't mind, could you scroll down to  
12 the -- to the second page?

13 Your Honor, you know, as you can see, based on these  
14 questions, there was significant scrutiny on the physicians  
15 that Howard engaged. Question number 5 specifically states,  
16 "Your response to our audit questions explains that your  
17 previous attorney, Howard & Associates, directed you to Dr.  
18 Ford-Johnson. Your answer for question number 28 explains  
19 that you do not remember seeing Ford-Johnson's report or other  
20 neuropsychologist that Howard's firm recommended to me. Who  
21 are the other neuropsychologist that Howard & Associates  
22 recommended to you? When were you examined by these  
23 providers?"

24 THE COURT: This was obviously meant to be for Mr.  
25 Small?

1 MR. SHENAQ: No, Your Honor, this was another  
2 settlement class member who was formerly represented by Howard  
3 & Associates, who had been engaged by the same medical  
4 experts, and the same sort of anomalies were found in their  
5 medical reports that triggered this audit.

6 THE COURT: Well, I thought that this particular  
7 email looked as if it was addressed to Amir?

8 MR. SHENAQ: Well, yeah, it was addressed to me,  
9 Your Honor, as counsel for that particular class member.

10 THE COURT: I see.

11 MR. SHENAQ: Alisha, could you please put Exhibit  
12 number 7 up on the screen, as well?

13 Your Honor, Exhibit number 7 reflects an initial set  
14 of written interrogatories in the audit process that are  
15 directed to a retired NFL player in the audit. These are the  
16 sorts of questions that we generally have to assist a class  
17 member in responding to in order to move forward in the -- in  
18 the audit process, and this is generally the beginning.

19 Alisha, could you go to the last page of this  
20 document, please?

21 This was another set of questions, again, related to  
22 medical doctors engaged by Howard & Associates in 2017 and  
23 late 2016. This one, question number 28, specifically says,  
24 "You were evaluated by neuropsychologist Dr. Lawanda Ford-  
25 Johnson on 12/1/16. Who recommended that you be evaluated by

1 Dr. Ford-Johnson? What did this person say about Dr. Ford-  
2 Johnson? Who was present at this evaluation? Did you review  
3 Ford-Johnson's report before it was submitted to the  
4 settlement program? Were any other neuropsychologist  
5 recommended to you?"

6 Again, Your Honor, these questions were provided  
7 around October of 2019, when this, you know, audit was being  
8 conducted of Mr. Small's claim and a number of other retired  
9 class members who had previously been represented by Howard &  
10 Associates and, you know, saw medical experts that Howard &  
11 Associates have engaged.

12 THE COURT: Were any of those witnesses provided by  
13 you or by Mr. Small?

14 MR. SHENAQ: These were -- there were responses  
15 provided by our firm, Your Honor. Again, these sets of  
16 questions were directed to a different settlement class  
17 member. But, again, as you can see, there was significant  
18 focus on the medical experts that Howard engaged.

19 THE COURT: Are you saying that -- you're saying  
20 that presentations made by Mr. Howard on behalf of Mr. Small  
21 included reports or evaluations from Dr. Ford-Johnson?

22 MR. SHENAQ: Yes, Your Honor.

23 THE COURT: (Inaudible) between this document and  
24 what you're saying would be its relevance to Mr. Small?

25 MR. SHENAQ: In between July 2019, Your Honor, and

1 December 2019, we received numerous discovery requests from  
2 the claims administrator that solely related to the conduct of  
3 Howard & Associates and the medical experts that they engaged  
4 to evaluate these players early on in the settlement. And  
5 it's no coincidence, Your Honor, when you see that members of  
6 Howard's staff were allegedly writing these medical reports.  
7 You know, the claims administrator was wise to pick up on what  
8 they picked up.

9 Alisha, I'd like to put up Exhibit number 8, as  
10 well, please?

11 Your Honor, Exhibit number 8 is another email from  
12 the claims administrator in the audit process, dated July 16,  
13 2019, addressed to me. This is an email, again, that's  
14 specifically asking questions about medical experts that  
15 Howard & Associates engaged for a retired NFL player. And,  
16 you know, I'd like to read question number 1 because, you  
17 know, this is one that's, you know, difficult to explain, Drs.  
18 Lloyd and Morgan's report notes that they administered the  
19 Mini and MMPI-2-RF tests only, and that they reviewed Dr.  
20 Ford-Johnson's neuropsychological test scores. We compared  
21 the test scores between Dr. Ford-Johnson's report and Drs.  
22 Lloyd and Morgan and identified that in six tests the Scaled  
23 score and the T score is different. Can you tell us why six  
24 test scores are different between the reports if Drs. Lloyd  
25 and Morgan incorporated Dr. Ford-Johnson's test scores? And

1       that's a question that we still don't know the answer.

2               But again, if you look back at the -- you know, the  
3       communications inside the firm, they suggest that the firm  
4       modified original reports of Ford-Johnson before they went to  
5       Drs. Lloyd and Morgan. And as you can imagine, you know, when  
6       you look at this altogether, it's highly suspect. And this is  
7       certainly not the type of legal work that anyone would expect  
8       to be performed with respect to, you know, any retired  
9       member's claim. And it certainly should not be rewarded in  
10      any means, whether there's a lien or a McKenzie or under any  
11      circumstance, Your Honor.

12              THE COURT: All right. So -- why don't you go on to  
13      your next exhibit.

14              MR. SHENAQ: Sure. Exhibit number 9, Your Honor.  
15      Exhibit number 9 is an email from Brian Garelli, who is the  
16      CEO of a funder called Preferred Capital Funding. This is a  
17      lender that Mr. Small was recommended to obtain a loan from by  
18      Howard & Associates on March 20, 2017. Actually, March 20,  
19      2017, is when Mr. Small actually signed the documents to  
20      obtain an advance from this funding company.

21              Your Honor, the terms of this advance stipulated a  
22      39.95 annual interest rate with a full recourse loan to the  
23      Smalls that was enforceable under Nevada law. This was merely  
24      four days after the Smalls saw Dr. Koberda, who was the  
25      original MAF neurologist. Or at the time he was not an MAF

1 neurologist because this was prior to the effective date of  
2 the settlement. But after seeing Dr. Koberda, within four  
3 days, you know, Mr. Small was, you know, convinced to go get a  
4 loan because he was going to receive payment on his claim, you  
5 know, in a short period of time because of how strong it was.  
6 At least those were the representations made to Mr. Small by  
7 Howard & Associates at the time.

8 Your Honor, Brian Garelli is now suing Tim Howard  
9 for fraud, alleging that Tim Howard fraudulently induced their  
10 outfit to provide almost \$6 million in loans to retired  
11 football players that at one point some or all were  
12 represented by Howard & Associates, so that Howard &  
13 Associates could take that money and invest into his hedge  
14 fund that he controlled and then lend the money back to these  
15 retired players, much like a Ponzi scheme, Your Honor. And  
16 this Preferred Capital, you know, believed that they were  
17 defrauded by Tim Howard. And we had to go back and forth at  
18 length to try to reduce the interest rate on my client Mr.  
19 Small's, loan.

20 THE COURT: Let me -- let me just ask you about  
21 this. So I understand there have been a number of allegations  
22 in some of the earlier documents that you've presented with  
23 respect to litigation, including litigation for the SE -- by  
24 the SEC. My particular question is, you came to be involved  
25 in representing Mr. Small in September of 2019. And so we're

1     talking about -- if we look at the McKenzie analysis, we need  
2     to put aside the circumstances for any work that you did prior  
3     to that particular date, since it appears that you were  
4     working in connection with Mr. Howard up until September of  
5     2019. How does this particular conduct with respect to what  
6     you say or allege or assert or believe Mr. Howard was involved  
7     in have a particular impact upon Mr. Howard's entitlement to a  
8     portion of the contingency fee and/or your entitlement to a  
9     portion of the contingency fee?

10           MR. SHENAQ: Yes, Your Honor. So, you're absolutely  
11     correct in that we did represent Mr. Small in conjunction with  
12     Mr. Howard for approximately a year-and-a-half. At the time  
13     the Smalls elected to terminate Howard & Associates, Your  
14     Honor, the Smalls were in the midst of an audit process. As  
15     you can imagine, an audit process is just as arduous and  
16     vigorous as defending any appeal from the NFL. In fact, it's  
17     even more difficult because of the fact that there are no  
18     finite time periods, there's no information that they provide  
19     -- the claims administrator provides, other than the  
20     interrogatories and potential hearing and document requests,  
21     for you to know where things are at in the audit process. And  
22     given the stigma and the cloud and all these, you know,  
23     exogenous factors that normally are not -- you know, are not  
24     present in any claim -- you know, these are very atypical  
25     things, Your Honor. You know, the Smalls felt that their

1 claim was highly clouded by the actions of Howard. And, you  
2 know, those were, you know, difficult things to overcome,  
3 especially when the claims administrator was laser focused on,  
4 you know, the actions of Howard and the potential impediments  
5 that may have caused, you know, the Smalls' claim to move  
6 forward.

7 So the audit process was not a typical one, Your  
8 Honor. It wasn't, you know, hey, you said you were working  
9 and the documents show something different. This goes well  
10 beyond that. And, as you can imagine, being in the position  
11 of the claims administrator, it's very difficult for a claim  
12 with a cloud such as this one to move forward without thorough  
13 and sufficient explanation.

14 THE CLERK: Sorry to interrupt. I think we may have  
15 lost Mr. Howard again. I think we just lost him. I saw his  
16 picture leave the screen.

17 THE COURT: Did you -- can you call him?

18 THE CLERK: Yeah, it looks like he's back now.

19 THE COURT: All right. So, Mr. Howard, can you hear  
20 me now?

21 MR. HOWARD: I can. Yeah, the internet keeps coming  
22 out. So I -- we left off at the represented -- Shenaq  
23 represented for a year-and-a-half and talked about the  
24 difficulty of the process, where we broke off.

25 MR. SHENAQ: Your Honor, I mean, in sum, this was

1 not a typical audit process. I've handled many different  
2 audits on many different claims, Your Honor, and this is far  
3 from typical. This audit process did not stem from any  
4 actions or concealment of information or potential  
5 misrepresentations of the Smalls, but rather it was driven by  
6 all the exogenous factors related to Mr. Small's former  
7 counsel that ended up prejudicing, you know, his claim. And  
8 so, you know, there was a significant risk of the audit  
9 process not being concluded in favor of the Smalls. And if  
10 there was evidence of any, you know, adverse finding, Your  
11 Honor, we would have had to go through a contested, you know,  
12 audit process with the Special Master that could have  
13 subjected Mr. Small to significant ramifications, including  
14 myself. And, you know, he could have lost his monetary award,  
15 as well. And, you know, even --

16 THE CLERK: Again, sorry.

17 (Pause)

18 MR. SHENAQ: And, Your Honor, even upon a successful  
19 conclusion --

20 THE COURT: Wait, wait. Wait, Mr. Shenaq. We've  
21 got to make sure that Mr. Howard is on.

22 THE CLERK: I see that --

23 MR. HOWARD: Yes, we're back. I'm sorry, we're  
24 having internet -- storms are here. I'm back on.

25 THE COURT: Would it be better, Alisha, do you

1 think, to just have him on by his cell phone?

2 THE CLERK: I think it wouldn't cut out if we had  
3 him do that. But then he wouldn't be able to see the  
4 exhibits.

5 MR. HOWARD: Well, I can put it on mute.

6 THE CLERK: So if he could -- he can just call,  
7 yeah.

8 MR. HOWARD: I put it on both. I'll mute it and  
9 I'll have the cell phone.

10 THE CLERK: Okay. So I'm going to stop the screen  
11 share quickly. I'm going to, Mr. Howard, be on a chat on  
12 Zoom. I'm going to message you the call-in information. I'll  
13 just send it to everyone, but everyone else can disregard.

14 Do you see that? (No audible response)

15 (Pause)

16 THE COURT: Alisha, how we doing?

17 THE CLERK: I think he's back.

18 MR. HOWARD: I've got -- I've got both.

19 THE COURT: All right. Thank you. Thank you, Mr.  
20 Howard.

21 (Transcriber change)

22 THE COURT: All right, Mr. Shenaq.

23 MR. SHENAQ: Yes, Your Honor. So picking up where I  
24 -- where I left off and addressing your -- your question, you  
25 know, there was an audit process that, you know, was not a

1 normal audit process. It was certainly driven by all the  
2 exogenous factors in the cloud surrounding Howard's  
3 involvement in Mr. Small's claim.

4 THE COURT: So let me -- I want to ask you a  
5 specific question about that. Exhibit 7 which is entitled  
6 just questions to a retired NFL football player in audit.

7 MR. SHENAQ: Yes, Your Honor.

8 THE COURT: Was this a document that was sent to you  
9 on behalf of Mr. Small as well as other lawyers on behalf of  
10 their respective clients?

11 MR. SHENAQ: Your Honor, this particular document  
12 was not propounded to Mr. Small, it was actually in relation  
13 to another retired class member, but generally this is a  
14 pretty standard set of interrogatories. But usually towards  
15 the end, Your Honor, after seeing probably 30 to 40 of these  
16 now, the last few questions sort of give you the genesis of,  
17 you know, what -- what the claims administrator is really  
18 trying to ascertain through the audit process.

19 THE COURT: Yeah, okay. So you're -- so I -- I may  
20 take from that, what you want me to take from that is that  
21 most of the generalized kinds of questions here, which are  
22 also specific in the types of treatment and some of the  
23 history with respect to the players' previous activity in  
24 football, et cetera, et cetera, is -- would have been  
25 something that was received by Mr. Small with certain

1 particulars concerning his past history?

2 MR. SHENAQ: Yes, Your Honor. This -- this document  
3 was actually received by Mr. Small at the outset of his first  
4 audit, although at the time, Your Honor, there was not a  
5 specific question like in question number 28 of this document  
6 that specifically references the neuropsychologist, you know,  
7 that the claims administrator was focused on.

8 THE COURT: So if I look at this document,  
9 paragraphs 1 through 26, it looks as if they might have  
10 applied to any number of different players. But as to this  
11 document, 27, 28 are specific with respect to a particular  
12 player, I think.

13 MR. SHENAQ: Yes, Your Honor, that's right. One  
14 through 26 are more or less generalized, you know, discovery  
15 or written interrogatories.

16 THE COURT: Yes.

17 MR. SHENAQ: And then usually beyond 26 is when they  
18 ask some specifics. And again I don't profess to know the  
19 inner workings of the audit process, but I've seen enough of  
20 these to, you know, to have a sense of, you know, what the --  
21 what the focus is. And when you, you know, look at the timing  
22 of this with the timing of the questions that we actually  
23 received on behalf of Mr. Small and the other questions that  
24 we've identified in, you know, Exhibits 3, 4, 5, 6, you know,  
25 it's easy to, you know, sort of draw the conclusion that there

1 was a specific focus on the conduct of Howard & Associates and  
2 the doctors they engaged in the early part of the settlement.

3 THE COURT: Okay. So how did that get resolved?

4 MR. SHENAQ: Well, in Mr. Small's case, fortunately  
5 we were -- you know, we provided responses to the best of our  
6 ability information that we knew at the time and were  
7 successfully able to navigate the audit process, which  
8 concluded in a notice of completed audit, that there had been  
9 no adverse outcome with respect to Mr. Small's claim.

10 Following the completion of the audit, there's still  
11 a process in which the claim, from my understanding, is  
12 evaluated and a monetary award would either need to be  
13 reissued or the claim is to be denied. So, you know, in Mr.  
14 Small's case, he did receive a notice of monetary award some  
15 time after the conclusion of the audit for approximately \$1.58  
16 million or so.

17 Even then, Your Honor, there was obviously still a  
18 great risk of the NFL filing an opposition to that monetary  
19 award again. An individual who has alleged Parkinson's in his  
20 early fifties is not typical, and certainly something, given  
21 the dollar amount, something that, you know, was concerning to  
22 us in the form of having to, you know, oppose an appeal that  
23 the -- the NFL may have filed.

24 THE COURT: All right. Now, at the beginning of the  
25 -- your presentation, you made obvious references to your

1 representation of Mr. Small. Your evidence has broadened a  
2 bit. So I'm going to ask you to tell me something about the  
3 background and experience that you had with respect to dealing  
4 with the claims that you believe -- I presume you believe  
5 would render you someone who is adequately informed and  
6 credible with respect to some of the inferences that you  
7 appear to have drawn from the background and all that you've  
8 had with respect to dealing with NFL players.

9 MR. SHENAQ: Sure. I'm happy to state on the  
10 record, Your Honor. You know, I am by no means a glamour  
11 show. Mr. Howard is certainly correct; we gave a very small  
12 footprint, Your Honor, but we make a very big impact. And the  
13 reason for that is, you know, I am dedicated to this work. I  
14 have represented now over 300 retired NFL football players. I  
15 act as of counsel to another law firm that also represents in  
16 excess of 300 retired NFL football players.

17 I have been actively involved in the NFL concussion  
18 settlement since December of 2016, Your Honor. I've helped  
19 facilitate well over 500 medical evaluations.

20 My firm alone has garnered approximately 60 monetary  
21 awards for retired NFL football players. We've recovered in  
22 excess of \$40 million, Your Honor, in this NFL concussion  
23 settlement.

24 I have personally briefed over 30 appeals, both  
25 opposing NFL appeals, as well as seeking to overturn denials

1 for my clients. I've handled approximately 30 audits, Your  
2 Honor.

3 I have been given the -- you know, the -- the inside  
4 in the form of an audit myself. The claims administrator in  
5 2018 examined me upside and down, vetted me, requested all  
6 sorts of communications between my firm and physicians,  
7 including communications between myself and clients, Your  
8 Honor. We have produced voluminous information to the claims  
9 administrator.

10 We had absolutely no -- no issues in any audit  
11 process of my law firm or any retired NFL clients that I  
12 represent. I think that you -- you know, if one were to ask  
13 the claims administrator, I suspect that, you know, they would  
14 say good things about my firm and the quality of work we do  
15 and our transparency, integrity, and honest and zeal in  
16 representing our clients.

17 THE COURT: All right. Well, thank you for that.  
18 Is there anything short of going to Mrs. Small that you'd like  
19 to add to your presentation up to this point?

20 MR. SHENAQ: You know, no, Your Honor. I think it  
21 would be helpful to hear from -- from Mrs. Small.

22 THE COURT: All right. But first of all, I want to  
23 give Mr. Howard, if he chooses to exercise it, an opportunity  
24 to ask you any questions.

25 MR. HOWARD: Yes, Your Honor.

Shenaq - Cross

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1 CROSS-EXAMINATION

2 BY MR. HOWARD:

3 Q Mr. Shenaq --

4 THE COURT: I'm sorry, before you do this. Perhaps  
5 I've been inattentive to what personal needs people might have  
6 and you might -- I don't know how long you want to take or  
7 expect to take in connection with Mr. Shenaq. If anybody has  
8 any particular needs, we can take a five-minute recess, or are  
9 we okay to carry on?

10 Nobody's given me any indication, so, Mr. Howard,  
11 let's go ahead.

12 CROSS-EXAMINATION

13 BY MR. HOWARD:

14 Q Mr. Shenaq, have -- were all of your claims under audit  
15 at any given time for your clients?

16 A Yes.

17 Q And how long did that audit take?

18 A That audit lasted probably eight to ten months.

19 Q Okay. And were any of those audits -- was that audit of  
20 all your clients caused by any of our clients?

21 A It's impossible for me to say yes or no, but I'm certain  
22 that my association with you and your firm, given that class  
23 counsel and numerous others were investigating your firm's  
24 conduct, certainly have something to do with -- with the audit  
25 of my firm.

1 Q Was the audit dealing with communications you had with a  
2 doctor that we're not -- there was -- as in the inferences  
3 there that were nothing to do with regard to my clients?

4 A The audit process requested numerous communications with  
5 clients, with medical physicians that we had utilized and was  
6 very broad.

7 Q And did they -- did they not take inferences from your  
8 email and said you were improperly coaching your doctors?

9 A I'm not sure what email you're referring to. I don't  
10 influence or seek to influence any physician in any way. But  
11 that's why we hired them because they are the experts and they  
12 are the ones who opine whether or not a player has a  
13 particular medical condition, not me.

14 Q Did you not have a conversation with me about how they  
15 took inferences from your email with a doctor which is part of  
16 the audit?

17 A I don't recall that conversation, so I don't know.

18 Q And -- and at the end of the audit process, did they find  
19 everything was okay?

20 A With respect to my firm, yes.

21 Q Right. And the inferences that they -- they read from  
22 your email was not -- not accurate?

23 A I mean I cannot profess to know what they've -- what  
24 inferences they took, but they cleared my firm of any audit  
25 improprieties or any concerns with respect to any of my firm's

1 communications with any client or doctors.

2 But, as you know, the audit process is obviously an  
3 evolving thing and they may not know certain things at the  
4 time that they know today. So there's certainly a possibility  
5 if, you know, they were satisfied at the time, circumstances  
6 may have changed, they may learn new information, that could  
7 trigger something different.

8 One other important thing to note, Mr. Howard, is  
9 that the claims administrator audits claims that are filed.  
10 Your firm did not file any claims, therefore you did not  
11 subject yourself to any audit scrutiny. So that's actually a  
12 product of -- of you guys not taking any steps to filing your  
13 claims on behalf of your clients.

14 Q Now, when an audit is completed, does -- does that  
15 release the claim to be processed?

16 A It puts the claim back in processing. It doesn't  
17 guarantee the same outcome or any outcome.

18 Q Did Jessie -- did the audit of Jessie Small's claim, did  
19 -- was it found anything wrong with his claim when the audit  
20 was done?

21 A The audit was -- like I said before was concluded without  
22 any misrepresentations that the claims administrator had  
23 found. But again it was based on information that the claims  
24 administrator knew at the time, and the information we used to  
25 respond to the questions about the -- you know, the anomalies

1       they identified with medical reports was provided from you to  
2       me.

3               So we relied on your representations to answer those  
4       questions. So if those were incorrect or wrong, you know, at  
5       the time, you know, we weren't aware of how your office  
6       prepared medical reports. So that was -- that was new  
7       information that you produced in your -- your response to our  
8       memorandum.

9       Q       So the -- and you've taken inferences from which you read  
10      -- you've -- you inferred issues that you don't know that are  
11      true, is that correct?

12      A       I think there's a significant amount of circumstantial  
13      evidence to the point that there have been improprieties in  
14      the work product that your office has prepared. Was I there  
15      in person; was I involved, absolutely not. Is there any way  
16      for me to know definitively, at this point no. But I think it  
17      is something that serious that warrants further scrutiny and  
18      investigation.

19      Q       So there's been an audit of both -- is Dr. Koberda MAF  
20      certified?

21      A       No. He's no longer -- he was terminated without giving  
22      30-day notice, which only happens when there's allegations or  
23      concerns about fraudulent activity.

24      Q       When did that take place?

25      A       That happened probably a few days after he received a

1 subpoena from the company that's suing you, Mr. Howard.

2 Q Okay. And did you -- did you -- did you not talk with  
3 the company that was suing me before they sued me?

4 A Of course I did. I had to resolve my client's lien to  
5 try to help them save money on their loan.

6 Q Right. And did you -- did you not cite these same  
7 allegations you put here to them to sort of foment them to  
8 filing a suit?

9 A Not at all.

10 Q Well, then why did they say thank you for getting the  
11 information, because he got the information from you, didn't  
12 he?

13 A Yeah, because he asked for case status updates on my  
14 clients, which I provided.

15 Q And -- and you did not, you said, that you actually  
16 fomented him to filing -- filing a suit because you guys --

17 A I did not -- if you're trying to accuse me of having  
18 somebody sue you, no. I think it's your actions and your  
19 acts, Mr. Howard, that, you know, created all of this. I did  
20 not foment, I have not pressured anybody to file suit against  
21 you. You have -- that's why we have this forum, to address  
22 any issues that we have amongst one another.

23 Q And are you not doing the same thing now? I would like  
24 to go back through the exhibits and show you've misinterpreted  
25 both exhibits through paralegals and not lawyers.

1 I go back to Exhibit 2 and how you interpret the  
2 Exhibit 2.

3 Can we see Exhibit 2 on the -- on the record,  
4 please?

5 A Well, Mr. Howard, you as the lawyer are -- you know,  
6 you're supposed to supervise the folks in your office and  
7 their work. It is under your supervision. So, you know, you  
8 can hide behind that all you want, but --

9 Q Okay. So -- so we have -- Duante is a young paralegal  
10 just out of -- out of -- out of college. Same with Erin  
11 Murphy. She's a paralegal, has -- has -- she does clerical  
12 work. They were talking -- they're not -- they're talking  
13 about doing affidavits. They're not talking about typing  
14 reports for it. If there was an issue with us typing reports,  
15 they would be -- go over to the audits. They'll be covered in  
16 all the coverage we've had. So that would clarify that's  
17 what's going on with --

18 A You're assuming, Mr. Howard. You're not involved in the  
19 audit process. You don't work for the claims administrator  
20 and you've never filed a claim to trigger any audit of your  
21 work, sir.

22 Q I'm explaining -- I'm explaining your Exhibit 2, what had  
23 taken place between Duante and Erin. So --

24 A Yeah, it -- it clearly states that to type a report for  
25 and the link is to medical reports, Mr. Howard, not affidavits

1 or third-party statements, as you're suggesting. You know, I  
2 think it's important that you provide accurate information to  
3 the Court.

4 Q I am. So we understand what happened, Duante and Erin  
5 work on affidavits. They look at the Ford-Johnson reports to  
6 see what -- what they're finding in that -- the affidavit is  
7 -- is -- is correlated with the -- with the reports. And so  
8 all they're doing is looking and typing up affidavits. That's  
9 what is going on here, they're working on affidavits. And --  
10 and once the client receives the affidavit or third-party,  
11 they have to make their own changes, their own -- own details.  
12 But they're trying to get affidavits here.

13 Let's go on to -- let's go on to -- further down on  
14 Exhibit 2.

15 A Mr. Howard, if -- if they were working on affidavits, why  
16 are they sharing a link to reports that were converted from  
17 PDF to Word files? Why would they want the medical reports  
18 and why would they be talking about reports. Erin Murphy is  
19 an attorney. She is not a paralegal.

20 Q No, Erin Murphy is -- actually doesn't even have a  
21 college -- an undergraduate degree.

22 A Okay.

23 Q So you don't know what you're talking about. And so --  
24 and same with Duante, Duante is just undergraduate. So  
25 they're using some of the wrong terminology. They're -- in

1 fact they're putting it in Word so they can take the  
2 information from the reports and put it in affidavits. These  
3 are young kids that don't know what they're doing in detail.

4 Let's go a little further down here. Okay, there's  
5 the OneDrive. Now, what's also interesting -- and just go  
6 further down, next -- next -- further down. We have Mr.  
7 Shenaq going -- going into my one -- OneDrive as of June 23,  
8 202, which is access -- a wider access to do that. Very  
9 strange to see that done --

10 A Mr. Howard, your office provided me --

11 THE COURT: Wait a minute. Wait, Mr. Shenaq, just  
12 hang on a second. Please don't interrupt his question. Let  
13 him finish his question. When he's finished his question, you  
14 can respond.

15 Mr. Howard, please don't interrupt his response.  
16 Let him give a full response. I don't want to have you  
17 talking over each other. It's hard enough for the -- for the  
18 court reporter. And you gentleman have shown me a lot of  
19 southern hospitality, despite some of the strong accusations  
20 that have been made or allegations that are made or implied.  
21 So let's not lose it.

22 Go ahead, Mr. -- Mr. Howard, restate your question,  
23 please.

24 BY MR. HOWARD:

25 Q Yeah. I'm pointing out the fact that Mr. Shenaq has gone

1       into my private OneDrive as of last week without authority.  
2       And even the documents he has shows that they're all distinct;  
3       they're not some template. And conversation of a PDF to Word  
4       at the time, I don't know where it's -- we've done nothing  
5       with these files for almost two years, two and a half years,  
6       but the -- it would have helped them, assist them with the  
7       affidavit process of the third-party reviews.

8               And, Mr. Shenaq, if you want to comment on that, you  
9       can go right ahead.

10       A       Yes, Mr. Howard. Given that you provided this link and  
11       suggested that this was the basis of the work that you  
12       performed for Mr. Small, my client, to suggest that you should  
13       be entitled to an attorney fee in this matter, is something in  
14       which I need to verify and actually see for myself what you're  
15       suggesting.

16               You provided this link in a filing knowing that we  
17       would review your submission, that the claims administrator,  
18       that the Court would review the submission. If you intended  
19       for this information to be private and not accessible by any  
20       third party, you would have changed any sort of privacy  
21       setting to that effect or simply not shared the link.

22               So the fact that you're suggesting that I'm  
23       committing an illegal act is actually -- is slanderous and  
24       slander per se, in fact. So I would suggest you be very  
25       careful with your accusations because it is you who has put

1 this in the public domain.

2 Q Let's go further down, please. Next one. So if you look  
3 at this email, I'm dealing with the assistance of Dr. Sadek.  
4 We're talking about two reports and we're dealing with Dr.  
5 Lloyd and Dr. Morgan. Dr. -- Dr. Lloyd and Morgan worked  
6 together. They're both at a place. I think Dr. Lloyd's board  
7 certified and Dr. Morgan is not. They both work with Dr.  
8 Sadek who the last I know was a MAF certified doctor. And so  
9 that -- that is the context.

10 We're talking about two reports. I'm informing them  
11 that employment is a key issue, especially for Mr. Small is a  
12 key issue. And so we have to talk about his cognitive  
13 limitations that caused him to lose employment due to his  
14 current cognitive is not -- that's why he's unemployment.

15 I'm referring -- and this is all showing there's no  
16 current employment. I'm referring to the prior two reports.  
17 That's the context of the entire -- this entire email. And so  
18 -- and there go -- there's -- if there is any employment, the  
19 claim will be denied. So letting Dr. Sadek know that  
20 employment is a key issue. That was a similar is sue that Mr.  
21 Shenaq dealt with in one of the -- and that's why they caused  
22 the audit with his claims --

23 A That's incorrect, Mr. Howard.

24 Q There's the inference that that caused an audit of his  
25 claims in reference to one of his doctors. And so this is --

1 the reason why Mr. Shenaq knows how to do these things,  
2 because it's the same kind of stuff he's dealing with in  
3 taking inferences out of emails or from the audits. This --  
4 this -- this is not -- we're not instructing them to -- what  
5 to do, we're letting them know that employment is a key issue,  
6 and we're talking about two reports here.

7 And Mr. -- Mr. Shenaq, you can respond if you'd  
8 like.

9 MR. SHENAQ: Your Honor, I'd like to correct a  
10 number of facts and representations that Mr. Howard made.  
11 First of all, Dr. Lloyd and Dr. Morgan, neither of these  
12 physicians, they may be board certified, but they lack the  
13 certifications and credentials that a neuropsychologist needs  
14 in order to support a neurologist in making a finding of a  
15 Level 1.5 or Level 2 claim.

16 In addition, Mr. Howard's contention is that he is  
17 referring to two reports. If that was the case, why would he  
18 want to focus on for every claim? That to me doesn't seem  
19 like two reports. And to suggest that for every claim, you  
20 know, the doctor should take an approach that there's no  
21 current employment, is the very type of conduct that the audit  
22 process is designed to investigate, Your Honor. This is not  
23 the typical work that a lawyer employs and -- you know, in  
24 working up any of these cases.

25 I don't take a one size fits all approach. I don't

1       instruct the doctors to make up facts that don't exist.  
2       That's very troubling, and that type of conduct should not be  
3       rewarded in any manner.

4               MR. HOWARD: Your Honor, if I may respond. Again,  
5       taking this out of context, the -- receipt of employment  
6       context are consistent with the underlying CDR and  
7       neuropsychological reports, in Dr. Sadek's reports. In these  
8       two cases, they're all showing there's no current employment.  
9       And so, you know, this taking -- it's disassembling  
10      information in order to make smoke that doesn't exist.

11             And, Your Honor, (inaudible) correct that Dr. Morgan  
12      -- Dr. Lloyd was board certified but not in the correct area  
13      and neither was Dr. Morgan. That is why they went through the  
14      process. We realized we -- we had to start over with the  
15      proper board certified doctors. But that's part of the less  
16      -- the learning process.

17             Some of these things actually helped us understand  
18      the -- in fact, all the -- all these reports and studies help  
19      us understand the condition of the client, gave a good  
20      foundation of what we're dealing with and allowed the properly  
21      board certified doctors in the final reports that we did with  
22      -- with the mission of to complete the report. This -- this  
23      effort was not wasted and in fact -- without the foundation  
24      work that the final doctors relied upon.

25             THE COURT: All right. I'm sorry, I didn't mean to

1 interrupt you, other than just to say I understand. But we're  
2 now obviously into argument, we're not into questions of Mr.  
3 Shenaq, which is what I -- what I wanted to focus on now to  
4 get that completed. You'll have a chance to make some  
5 argument.

6 BY MR. HOWARD:

7 Q All right. So I wanted to focus on the -- I think it's  
8 Exhibit No. 9, I think. I want just to point out verified to  
9 -- to -- I don't have it on the screen. It may be 11. Okay,  
10 that -- we've got -- I've already covered nine, that's the --  
11 the -- taking smoke and creating more smoke. I think it's  
12 number three, is that one? So 11, Exhibit 11.

13 So I want to -- Mr. Shenaq, this is dealing with our  
14 consistent communication with Jessie Small, and Mr. Small's  
15 asking -- constantly asking questions. I'm giving responses.  
16 Mr. Shenaq, doesn't this evidence show we're constantly  
17 communicating with Jessie Small?

18 A Well, to the contrary, and I think Mrs. Small can -- you  
19 know, is going to be in a better position to -- to describe  
20 the communications. But it is interesting that, you know, in  
21 your voluminous 1800 page production, this email was -- was  
22 not included. So, you know, that seems sort of peculiar.

23 Q What's the -- what's the Bates number on this?

24 A There's no Bates number, Your Honor.

25 Q So let's just say it's an email from Mr. Small to Mr.

1 Howard on February 19, 2018. Okay.

2 A Yes, it's Exhibit 11, Your Honor, and --

3 Q Thank you. And I guess I'm missing some of the portions,  
4 but I think, you know, that I'm seeing evidence there that has  
5 nothing to do with Jessie Small's claim. I think the number  
6 27 that we're talking about on the -- the audit question  
7 dealing with Laurie Morgan and Dr. Hopper.

8 THE COURT: That was Exhibit 7, wasn't it?

9 MR. HOWARD: This was (inaudible).

10 THE COURT: Yeah.

11 BY MR. HOWARD:

12 Q Mr. Shenaq, you're -- you're -- this has nothing to do  
13 with -- with Jessie Small's claim, right? These doctors were  
14 not for Jessie Small's claim?

15 A Mr. Howard, these questions were not propounded to Mr.  
16 Small, they were to another settlement class member who were  
17 evaluated by physicians that you collaborated with, that also  
18 happen to be the very same physicians that Mr. Small saw when  
19 he was represented by your firm. And these questions were  
20 received around the same time Mr. Small received similar sets  
21 of questions questioning anomalies that they found in these  
22 particular doctors' medical reports.

23 Q But these were the -- these had nothing to do with Mr.  
24 Small's claim, this was for another client?

25 A These questions were not directed to Mr. Small.

1 Q And were all these issues resolved and all -- and claims  
2 processed and taken out of audit?

3 A The -- you know, I don't know the status of every one of  
4 these claims off the top of my head, but a number of these  
5 claims were resolved in the audit process, yes.

6 Q Okay. So which means that someone investigated this and  
7 found there was nothing wrong?

8 A Well, I'm not sure what extent their investigation was.  
9 I suspect that there was -- there is tremendous credibility  
10 between my firm and the claims administrator and they put a  
11 lot of weight in my responses, a number of my responses for a  
12 lot of representations you made to me and my firm as the basis  
13 of the response which, you know, now seeing some of the  
14 documents that you've recently produced are somewhat  
15 concerning in the sense that they may not actually have been  
16 correct.

17 THE COURT: Mr. Shenaq, let me just question you a  
18 bit in a comment that Mr. Howard had made. I was led to  
19 believe, I felt that this document that's up on the screen  
20 now, I think it's Exhibit 7, Alicia, is that right? Exhibit  
21 7. That you had said that there was a comparable document  
22 that was sent to Mr. Small and that the questions up to number  
23 27 that were specific. Let's go to the papers.

24 Go through it, Alicia, paragraph -- yeah. So -- no,  
25 no, go back -- go back where you were, 25, 26.

1           So -- great. So as you can see on this one, on  
2 paragraph number 27, it's specific with respect to someone's  
3 high school job -- or job that they might have had coaching  
4 football? But 26 and earlier were more generalized questions  
5 as to -- as they say detail your community activities, detail  
6 your goal with respect to shopping (phonetic).

7           You had led me to believe -- I think you were trying  
8 to lead me to believe that questions like up to that point, up  
9 to something specific about whether or not you worked as a  
10 high school coach, that were -- they were asked of Mr. Small.  
11 Now you're saying in response to Mr. Howard's question it had  
12 nothing to do with Mr. Small.

13           MR. SHENAQ: Your Honor, your assertion in that Mr.  
14 Small received a similar equivalent document without questions  
15 27 and 28, more or less the same genesis of written questions,  
16 was in fact received by Mr. Small and that was received during  
17 Mr. Small's first audit. These questions were not propounded  
18 to Mr. Small during this second audit, which began sometime in  
19 July of 2019.

20           THE COURT: Okay. But they were in the first audit.  
21 And I -- by the way, I'm not comfortable with you  
22 characterizing something as my assertion. I'm not trying to  
23 assert anything. I'm just --

24           MR. SHENAQ: Sure.

25           THE COURT: -- trying to get some clarity as to the

1 -- as to the --

2 MR. SHENAQ: Understood, Your Honor.

3 THE COURT: -- my understanding of the answer to the  
4 question on the use of this document. So you're saying that  
5 the essence of it, but for the specifics in 27 and 28, would  
6 have been applicable to the first audit, but not as to the  
7 second audit?

8 MR. SHENAQ: Yes, Your Honor.

9 THE COURT: All right. Thank you. I'm sorry, Mr.  
10 Howard. Go ahead.

11 MR. HOWARD: Let me see if I have any other  
12 questions, Your Honor.

13 BY MR. HOWARD:

14 Q Ms. Shenaq, you will agree that the inferences are not  
15 facts?

16 THE COURT: That's a hard question to ask a lawyer  
17 to answer.

18 A It depends, is my answer.

19 Q Okay. Do you think attorneys use inferences for  
20 advocacy?

21 A Of course they do, but the overwhelming -- I mean this --  
22 this is sort of an expression, if there's a turd, there's  
23 generally something more. And the number of allegations  
24 against you, Mr. Howard, especially the serious allegations of  
25 fraud brought by so many different individuals and entities,

1     you know, it's hard to say this is a one-time occurrence. I  
2     mean it's a pattern of practice. So I think the inferences  
3     here very much support and very much closely track what likely  
4     really happened.

5     Q     If the -- if the inferences all derive from the same core  
6     source of people and it didn't take place in the prior 33  
7     years, do you think maybe there's some -- some coordination  
8     going on to create these inferences?

9             THE COURT: Gentlemen, if you don't mind, I don't  
10    think that this kind of line of questioning and the responses,  
11    the way -- are very helpful to my process.

12            MR. HOWARD: True.

13            THE COURT: I understand the difficulty that would  
14    be between the two of you. I take that into account in a way  
15    I think is fair and reasonable. But certainly the way in  
16    which you responded to the question, I'm not sure was  
17    particularly appropriate in my mind, Mr. Shenag. I mean I get  
18    it, I understand about advocacy. (Inaudible) I understand.

19            So do you have anything else factually that you want  
20    to question Mr. Shenag about, Mr. Howard?

21    BY MR. HOWARD:

22    Q     Just to complete, Mr. Shenag, did the -- was the Jessie  
23    Small claim cleared of all issues both in the first or second  
24    audit and did his claim get paid?

25    A     Jessie Small's claim successfully concluded the audit

1 process and he did receive payment after the completion of the  
2 second audit.

3 Q Okay. Thank you.

4 THE COURT: All right. Mr. Shenaq, something else  
5 you wanted to present, sir?

6 MR. SHENAQ: Yeah, I'd like to call Mrs. Small, Your  
7 Honor. I think -- you know, she is the spouse of -- of Mr.  
8 Small and intimately familiar with, you know, all of his day-  
9 to-day affairs as well as his choice of counsel and the scope  
10 of work performed by --

11 THE COURT: Okay, fine.

12 MR. SHENAQ: Okay.

13 THE COURT: So, Mrs. Small, would you be good enough  
14 to raise your right hand, please.

15 RENESSA SMALL, DEFENDANT'S WITNESS, SWORN

16 THE COURT: Mr. Shenaq.

17 MR. SHENAQ: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. SHENAQ:

20 Q Mrs. Small, thank you for allocating some of your time  
21 this morning. I'd like to start by having you tell the Court  
22 how you became aware of Tim Howard and Howard Associates.

23 A We became aware through another retired NFL player who  
24 was considering Mr. Howard. And before I get into any other  
25 questions, I would like to say that I am totally stunned right

1 now because Mr. Howard started this process by perjuring  
2 himself how he never thought and we never had testing or ever  
3 been diagnosed that my child has autism, and I don't know  
4 where that statement came from and it's totally untrue.  
5 Neither have any of their associates or Mr. Howard ever  
6 visited my home. That is totally incorrect. That's never  
7 happened. And I'm just floored that he is saying that my  
8 husband has ideations of suicide. That has never happened.  
9 And the doctor's statements will state that. And I am at a  
10 loss of words by his statements just to make himself look  
11 good.

12 Q Mrs. Small, thank you. We'll -- we'll get -- we'll get  
13 to that, you know, in the sense of the legal work that Howard  
14 & Associates performed on your husband's case. But I want to,  
15 you know, just for the record, if you could, you know, explain  
16 how you came to find Tim Howard and Howard & Associates and  
17 why you decided to have his firm represent you and your  
18 husband in this NFL concussion filing.

19 A Well, we -- we went to his office in Tallahassee and upon  
20 sitting down with him, he explained to us, you know, that he  
21 has had, you know, a large case with tobacco and that he was  
22 successful in those cases and knew how to handle large  
23 entities like tobacco and the NFL and that he would represent  
24 us well. And, you know, we would have total access to him  
25 during the time of our case. So those kinds of statements

1       made from him kind of -- it's the reason why we -- we -- we  
2       got his services.

3       Q     Did -- did Mr. Howard, you know, make you feel like he  
4       would be able to successfully help you get compensated in the  
5       NFL settlement?

6       A     He did, especially after we had like an appointment with  
7       Dr. Koberda and he was telling us, you know, how qualified Dr.  
8       Koberda was, and that once we had that particular medical  
9       appointment, he stated that my husband had a very solid case  
10      with the NFL and that we would -- that once the case started  
11      and the claim was filed, that we were looking at maybe 90 to  
12      180 days of receiving compensation because of the medical  
13      issues that my husband had.

14      Q     And -- and once you retained Howard & Associates, how  
15      many times would you say that you actually communicated with  
16      Tim Howard?

17      A     Only a handful of times. We had a very -- a very  
18      difficult time communicating with him. Initially, like in the  
19      first part of it, he communicated a few times when we got the  
20      medical report back from Dr. Koberda, and then he talked to my  
21      husband about the loans and investing in like a -- in  
22      Cambridge, a Cambridge Fund. And a few days after we were --  
23      we were still thinking -- because he told us about the up to  
24      180 days that the case would go through, my husband actually  
25      secured a loan with a group called Preferred Capital, and he

1 was thinking that he could repay the loan very quickly because  
2 of the information he had gotten from Attorney Howard.

3 Q And who was the primary person that you and your husband  
4 interacted with at Howard & Associates?

5 A Primarily Tom Woods and some of the lower level  
6 employees. Like I said, we had a difficult time getting in  
7 touch with Attorney Howard or having our inquiries responded  
8 to by him. And so the other employees, Tom was the sort of a  
9 lawyer that would give us a call back or respond to emails.  
10 But they never had any pertinent information regarding our  
11 case and couldn't answer our questions.

12 So we continued to try to get in touch with Attorney  
13 to see like where our claim was in the process because he kept  
14 telling us that he was going to file the claim, he had  
15 registered us and he was going to file the claim. And we kept  
16 asking like where it is. I mean weeks would go by and we  
17 would have no response from him as to where we were in the  
18 process, where the claim was, and what was going on.

19 Q And when did you or Mr. Small make Howard's office aware  
20 that Mr. Small was not registered into the settlement under  
21 the correct name?

22 A In 2017, I think it was. They had -- Jessie had told  
23 them that his -- his name was spelled incorrectly.

24 Q And do you know if Howard & Associates ever fixed that?

25 A They did not.

1 Q Can you tell us what sort of legal services Howard &  
2 Associates performed on your husband's case?

3 A I don't think I can -- I don't think I can refer to what  
4 he does -- he did as legal services. I think that the actions  
5 that he took on my husband's case actually and his claim  
6 actually like made it worse because they -- they took us into  
7 a lot of audits regarding information that the physicians that  
8 he had sent us to provided to them, and all of our audits were  
9 based on those particular physicians.

10 He had registered him under the wrong name and then  
11 corrected. That correction didn't occur until we got with you  
12 actually to make that adjustment.

13 He arranged for him to see, what was it, Dr. Edwardo  
14 Williams, I think it was, and that particular appointment took  
15 place at Attorney Howard's office, which was a little  
16 concerning for me, and then he arranged appointments with like  
17 Dr. Koberda and Dr. Sadek and Drs. Lloyd and Morgan. And at  
18 the time, we weren't aware even with Dr. Williams' appointment  
19 that he had had some other issues and couldn't see female  
20 patients, only male patients at the time. So we were very  
21 concerned about the lack of legal services that we received  
22 from Mr. Howard.

23 Q But -- but it sounds like, Mrs. Small, there were  
24 physician visits that Howard's office did schedule for your  
25 husband, correct?

1 A Correct.

2 Q And you -- you didn't mention Dr. Ford-Johnson, but was  
3 that -- was Dr. Ford-Johnson a physician that Howard &  
4 Associates scheduled and arranged your husband to visit with?

5 A He didn't see Dr. Ford-Johnson. I think she -- or Dr.  
6 Ford-Johnson took the medical information from the visit with  
7 Dr. Edwardo Williams to use. So he never actually saw that  
8 particular physician.

9 Q I see. And -- and these medical visits, Mrs. Small, when  
10 were they -- what year did they all take place in?

11 A 2017 that would be.

12 Q Okay. Did -- would you say that Howard constantly  
13 communicated with you and your husband throughout the claims  
14 process?

15 A No. Early on we saw that we were having issues,  
16 communication issues with Attorney Howard and getting  
17 responses from him. And if we got a response, they normally  
18 were not accurate, or he just didn't respond at all. But he  
19 -- he may have had a couple of times some of his employees  
20 contact us, and they never had pertinent information regarding  
21 the case or the claim and could never really respond to our  
22 questions. So we were very frustrated early on about his lack  
23 of attention to the case.

24 So my husband was like maybe if I, you know, advise  
25 him, since the last emails -- because he had sent one in

1 December, around the end of December stating that, you know,  
2 it had been weeks and Mr. Howard told us that our claim would  
3 be filed. And he said earlier, and he said, well, like it's  
4 been weeks and we haven't heard anything, where's our claim.  
5 And then we got a response back that they were reviewing the  
6 claim and had not filed it. And until we got with you, our  
7 claim had actually never been filed and we had no idea that it  
8 has never been filed because of the lack of communication.

9 Q And when would you say, Mrs. Small, that you and your  
10 husband stopped hearing from Mr. Howard?

11 A I would say very early on. And -- and looking at some of  
12 the information that -- when we did some research and started  
13 hearing about legal matters that was going on, I would say  
14 soon after Dr. Koberda's appointment and us declining kind of  
15 like to invest in some of the things that he was asking us to  
16 invest in, unless my husband got like the loan from Preferred  
17 Capital, we didn't hear from Mr. Howard, on very rare  
18 occasions.

19 Q And there was an email, Mrs. Small, that your husband  
20 sent on February 13th, 2018 which is incorporated into Mr.  
21 Howard's response to our dispute statement where your husband  
22 emailed Tim Howard and requested assistance with Social  
23 Security Disability. Did Howard & Associates assist your  
24 husband with Social Security Disability?

25 A I would say no. My husband asked him -- inquired as to

1       whether or not he knew of any attorneys who could assist him  
2       with Social Security, and he told us that he had a few in  
3       mind. But my husband kept sending him correspondence like,  
4       you know, do you have anybody that I can talk to because we  
5       didn't know of any particular Social Security attorneys. And  
6       he said he was still looking into it and waited so long that  
7       we actually contacted another attorney, got some information  
8       from someone else. And I had gotten in touch with another  
9       attorney before -- I think he sent information like weeks and  
10      weeks later, and we had gotten in touch with another attorney  
11      to handle my husband's Social Security.

12     Q     Okay. How did Howard --

13     A     I would say that helped in getting assistance from  
14     Attorney Howard.

15     Q     Okay. Thank you, Mrs. Small. How did Howard &  
16     Associates assist your husband with depression?

17     A     He did not.

18     Q     What about --

19     A     What do you mean by assist?

20     Q     Well, I don't know, Mr. Howard, you know, has alleged in  
21     his memorandum that he has assisted your husband with  
22     depression.

23     A     That -- that has not happened.

24     Q     Okay. What about suicide ideations?

25     A     My husband never had suicide ideations, so he didn't

1 assist him with that.

2 Q And how did Howard & Associates assist you or your  
3 husband with health coverage for your family?

4 A They didn't assist us because we already had health  
5 coverage.

6 Q Okay. How did Howard & Associates assist your husband  
7 with lack of employment? Did they offer him a job?

8 A No.

9 Q What other benefits did Howard & Associates assist your  
10 husband with?

11 A He hasn't assisted us with public assistance that I'm  
12 aware of.

13 Q Okay.

14 A Never has.

15 Q And during -- during the course of your representation  
16 with Howard, did he ever represent to you or your husband that  
17 your husband was impaired to a degree that he would have a  
18 claim to submit in the NFL concussion settlement?

19 A He originally told us that we have a claim because of Dr.  
20 Koberda's evaluation and that we would have -- a claim would  
21 go through probably pretty quickly. He said between 90 and  
22 180 days we should have something, and that concerned me  
23 because, you know, in my background, I have never seen  
24 somebody be able to give you like a time frame on a court case  
25 because there are always things that can come up.

1           So that concerned me a little bit, but I was like --  
2   you know, he was so adamant about knowing what he was doing  
3   because of the big tobacco and dealing with large entities  
4   like the NFL and big tobacco, I was just like, okay, maybe he  
5   understands something that we're not aware of.

6   Q     And did you or your husband believe at that time that he  
7   was in fact eligible for compensation himself?

8   A     We did, which is why he actually took the loan that Mr.  
9   Howard suggested through Preferred Capital. Mr. Howard and  
10   his associates suggested that he go to that company to get  
11   funding.

12           He -- he asked us about joining into Cambridge, but  
13   we actually declined. For me, I thought it was a conflict of  
14   interest with him being their attorney, and then we didn't  
15   know about him actually being associated with the company.  
16   But I just thought it was a conflict in an attorney who was  
17   handling like a case and then kind of asking you to join some  
18   kind of venture. It just didn't sit right with me. So we  
19   declined.

20   Q     Okay. And did -- for the record, did Howard & Associates  
21   file a claim for your husband?

22   A     No. He registered him in the settlement, but a claim  
23   wasn't filed until you actually took over our case. And --  
24   and we got so much erroneous information from them that we  
25   actually started communicating just with your office to know

1       that we were getting true and accurate information.

2               There were times when my husband was asking about  
3       the claim and he told us that we're there. And there were  
4       times when, you know, we asked about whether or not we were  
5       like, you know, early on in our audit process or why was it  
6       being held up, was there some issue. And he -- his office  
7       told us that we weren't in an audit when we were actually in  
8       an audit.

9               So just getting so much erroneous information, we  
10       just really stopped communicating with him and had sole  
11       communication with your office.

12       Q     Okay. And -- and help the Court understand, Mrs. Small,  
13       you know, you say that Howard & Associates represented that  
14       your husband was impaired and he would qualify for the  
15       settlement, but you're also saying he never filed a claim for  
16       your husband. Why would he not file a claim?

17       A     I haven't the slightest idea, because we initially  
18       thought that a claim was filed. I mean we were actually taken  
19       aback when we started communicating directly with you about  
20       that a claim had never been filed, and you actually filed a  
21       claim on our behalf into the settlement case.

22       Q     And did Howard & Associates recommend that you obtain a  
23       loan against a potential settlement award, Mrs. Small?

24       A     Yes, he did. He recommended that to my husband. It was  
25       actually two loans through his office and associates. One

1 through Preferred Capital and the other through a company  
2 called Beacon.

3 Q Okay. And did --

4 A And we found out later that they were like very high  
5 interest loans. I was concerned because he knew that my  
6 husband had neurological issues and I was very concerned that,  
7 you know, he had steered him towards loans with such high  
8 interest. But he assured him that the case would not take  
9 long and would soon be resolved, that he could pay the loan  
10 balances off.

11 Q And did Howard & Associates actually help your husband  
12 obtain that loan?

13 A Yes, they did. They actually gave him the information  
14 about the company, set up his -- his and another player's like  
15 travel, hotels, everything to procure the loan. And soon  
16 after he procured it, I mean he was asking him about going  
17 into a venture with a Cambridge Fund.

18 He also asked us about some other investment that he  
19 was involved in, and that one stuck out because at the time  
20 that he called my husband, we were -- we were at the hospital  
21 with my daughter having a medical issue, we were in the  
22 emergency room, and he called my husband asking him about  
23 getting involved in some other investment that he had. But we  
24 declined that one also. And I was just very perturbed with  
25 him because we had -- we were going through some issues at the

1 time with our daughter and that he was -- asked us for funding  
2 knowing that there were employment issues and other things  
3 like that. It was just a little confusing for me, I would  
4 say.

5 Q And to clarify, when you mean getting involved, what does  
6 that mean, when Mr. Howard asked your husband to get involved  
7 in a business venture?

8 A Financially. He wanted him to invest money. So from my  
9 perspective, you know, he was helping him procure loans so  
10 that he could invest it in companies or investment ideas that  
11 he had.

12 Q I see.

13 A Which I didn't think was appropriate for, you know, the  
14 attorney that was supposedly working on our case to do.

15 Q And --

16 A I figured if there were any legal issues, that he would  
17 be aware of that.

18 Q And -- and -- and why did your husband need to travel to  
19 (inaudible)?

20 A He told him about a company out of Nevada, and so he set  
21 up the hotel and cars to take them there, because I had  
22 already told him that he had issues like finding his way  
23 around sometimes and would actually use like navigational  
24 systems. So he procured cars to take them there, hotel rooms,  
25 airplane tickets. And I just thought that was strange that he

1 would set all of that up for him to get funding and then ask  
2 for him to use it for a Cambridge Fund.

3 Q And at the time, Mrs. Small, your husband signed the  
4 loan, did Howard & Associates explain any of the terms of the  
5 loan like the fact that it was a full recourse loan to your  
6 husband and that it had a 39.95 percent annual interest rate?

7 A No, he did not.

8 Q And then circling back, can you confirm for the record  
9 Mr. Howard sought to have Mr. Small invest the proceeds from  
10 that loan into investments that Mr. Howard managed, is that  
11 correct?

12 A Yes, and -- and so for me, I was thinking that the only  
13 reason he wanted him to get the loans were to invest in these  
14 funds that he had. And so we started seeing like  
15 informational things going on.

16 We saw an article in like Law360 regarding these  
17 hedge funds and what he was doing. And so we were like, he  
18 asked us to procure this loan so that we could invest in his  
19 company and then he loaned the money back to us, because my  
20 husband knew like one or two of the players that he was having  
21 legal issues against regarding investing in this fund and then  
22 he was kind of loaning them their money back.

23 And, you know, we had seen other information and  
24 articles regarding him. We found out that he was being sued  
25 by the FEC -- the SEC, that he was being sued by other retired

1 players that we were aware of, and that he just had a lot of  
2 -- lot of legal issues going on.

3 And, you know, that article was just like the last  
4 straw for us, when we kind of put it together that he was kind  
5 of like trying to include us in these schemes that he had for  
6 the hedge fund. And so we just terminated his services  
7 because I was like, this is it, this is too much, there's like  
8 a lot going on and, you know, he's kind of like included us,  
9 although we declined to invest.

10 I mean we could have been one of those people that  
11 we know that, you know, just procured these loans and then we  
12 owed like a lot of money back on these loans because of the  
13 time frame that the case took. And it was extended due to the  
14 fact that these doctors that he referred us to were in  
15 question in regards to how the -- the medical reports were  
16 obtained, you know, contradicting information on the medical  
17 reports. So the case was extended through these audit  
18 processes, and all of the audit information had to do with the  
19 doctors that he referred us to.

20 Q And again, Mrs. Small, at this time Howard & Associates  
21 was still solely representing you and your husband, they had  
22 you obtain a loan, sought for you to use the proceeds from  
23 that loan that was procured by medical reports from Howard's  
24 experts to invest in Howard's hedge fund entities, and then,  
25 you know, he made you and your husband believe that you were

1 so impaired and had you do all this, yet never filed a claim  
2 for you. I still don't understand why he did not file a  
3 claim. Can you provide any possible explanation of why that  
4 didn't happen?

5 A Well, I -- for me personally, and we -- and we discussed  
6 this, I think that his -- that what he wanted was for us to  
7 invest in the fund. I don't think it had anything to do with  
8 my husband's settlement claim.

9 I think he wanted us to get these loans so that we  
10 could invest in the funds to enrich himself, and it had  
11 nothing to do with advancing our claim and helping my husband  
12 get assistance. Actually, I think he -- he's cost us a lot of  
13 money because a lot of this medical information I think could  
14 have been found out sooner. And it kind of -- at the time  
15 that the diagnosis was made, my husband was older, so it  
16 actually reduced the amount of his settlement because of his  
17 age at the time.

18 (Transcriber change)

19 Q And, Mrs. Small, why did you decide to associate Shenag,  
20 PC into your husband's case?

21 A Because we weren't -- we weren't getting any information  
22 from Mr. Howard. It was -- we didn't get any responses from  
23 him. And so in the response that we got from his office was  
24 erroneous information a lot of the time.

25 So we came to you, because you were giving us

1 accurate information. You actually filed our claim into the  
2 settlement case. You corrected my husband's name where we had  
3 sent him information, Mr. Howard, to do name corrections and  
4 that never happed.

5 You also reviewed like his medical information to  
6 get him the best possible outcome on the settlement claim.  
7 You actually sent us to the MAF and BAP physicians that we  
8 needed to actually get a valid claim filed. Because we found  
9 out that the information that Mr. Howard had wasn't valid, and  
10 that those doctors weren't actually be able to give us an  
11 accurate diagnosis under the settlement.

12 And you guided us through the audit process, the  
13 initial audit process, which was totally based on the  
14 physicians that Mr. Howard had recommended to us early on in  
15 the process that had nothing to do with my husband's  
16 diagnosis. That you reviewed the medical documentation that  
17 kind of identified that he had a more serious diagnosis with  
18 the Parkinson's disease.

19 And actually removed the first claim and filed  
20 another claim for that Parkinson's diagnosis, which gave him a  
21 bigger settlement. And that was through the second audit  
22 process, which occurred from the doctors that Mr. Howard had  
23 initially sent us to that, again, had nothing to do with the  
24 Parkinson's diagnosis, but we went into audit because of those  
25 initial physician.

1 Q And was the outcome (inaudible) Howard's firm recommended  
2 that you and your husband enter into?

3 A We actually owed them a lot of money, but -- during the  
4 time that our settlement was going to be over. And your  
5 office, and you particularly, actually negotiated almost by 40  
6 percent the rates down to 10 percent, which saved us probably  
7 more than like \$90,000.

8 Q And I know you touched on some of the legal services that  
9 our firm provided. Was there anything that we provided beyond  
10 what we were obligated to under our representation of you and  
11 your husband?

12 A Yes, you worked with us to try to find methods to assist  
13 him with the Parkinson's and things that we could do to kind  
14 of stop the Parkinson's -- not totally stop it, but slow its  
15 progress, which for me was outside of your normal duties as an  
16 attorney, and I really appreciated that from you and your  
17 office. And we're forever grateful that you helped us with  
18 that.

19 You know, identifying various methods that we could  
20 use to help with the Parkinson's disease and slow it down.

21 Q And how about any other, you know, benefits that we were  
22 able to help your firm (sic) with? Were there any other  
23 programs that we assisted you and your husband with?

24 A You helped us with -- also with going through the NFL  
25 plan, 88 plan. And trying to secure those benefits through

1 the NFL 88 plan.

2 Q And who was your day-to-day contact, or who did you  
3 normally contact at Shenag, PC?

4 A We talked to you. Which I was grateful for. But we had  
5 -- we had a hard time with Mr. Howard and the lack of  
6 communication. And you responded to questions that we had. I  
7 mean, you responded to them yourself. There were a few  
8 occasions where you were not available, and you had some of  
9 your associates contact us.

10 But even after that, I mean, you still called us to  
11 ask if we had any residual questions, any residual inquiries.  
12 And you gave us kind of like that one-on-one care that we  
13 needed that -- that we were missing with Mr. Howard.

14 Q And how regularly would you say those contacts or  
15 communications were from Shenag, PC's offices?

16 A Oh, we talked to you probably about every day, every  
17 other day, or a few times a week. It was just a lot because  
18 we -- we wanted to know what was going on and you relayed that  
19 information to us, and if we had any residual questions  
20 regarding that, you returned our calls within like 24 hours.

21 And that was something that we were not used to with  
22 our initial attorney, Mr. Howard.

23 Q And why did you decide to terminate your attorney-client  
24 relationship with Tim Howard and his law firm Howard &  
25 Associates?

1       A       Besides the communication issues -- but there was just a  
2       lot of information and researching that we got regarding some  
3       of his legal issues, there was a Law 360 article that we read  
4       regarding, you know, the hedge fund and how he was having  
5       players invest in this fund.

6               And we know that it was introduced to us, and that  
7       he was having the issues with the SEC and with the Florida --  
8       with the Bar regarding some of his practices.

9               And it was kind of like a last straw issue. And so  
10       we decided, probably the next day I think it was, or a day or  
11       two to terminate his services. We didn't think that he could  
12       adequately, with all of that going on, pay attention to our  
13       case because he was giving it so much -- a lot of attention  
14       prior to that, that we just decided to sever his services.

15              Because we weren't getting any legal services from  
16       him that we can identify anyway.

17              MR. SHENAQ: And, Your Honor, I'd like to introduce  
18       Exhibit 1, which references what Mrs. Small is referring to in  
19       the documents that they've obtained that were instrumental, or  
20       a significant factor of their basis of termination of --

21              THE COURT: I'm familiar with it. It may have some  
22       potential bearing on the questions with respect to their  
23       determination as to terminate Mr. Howard. But I don't need to  
24       have her go through it at all, please.

25              And I'm familiar with the allegations. I'm familiar

1 with Mr. Howard's denial with respect to those -- to the  
2 allegations. I think it -- you know, I accept it as backdrop  
3 for the reasons and rationale from Ms. Small's perspective as  
4 to why she terminated Mr. Howard.

5 So let's move on beyond that.

6 MR. SHENAO: Thank you, Your Honor.

7 THE COURT: The same thing with attorney --

8 MS. SMALL: And I would just like to say that we,  
9 you know, Amir offered us the same -- we went with him with  
10 the same agreement that we initially had with Attorney Howard.  
11 And so for us it just made sense, because he was the person  
12 that we were doing all the communication with that gave us all  
13 the answers, that filed our case -- that filed our claim.

14 Actually, two claims. And so it just made sense to  
15 us to move, because we weren't getting any services from  
16 Attorney Howard.

17 MR. SHENAO: And, Your Honor, I just have one  
18 question for the Smalls, and I'll hand it over.

19 THE COURT: Are you going to make it a non-leading  
20 question?

21 MR. SHENAO: I'll do my best, Your Honor.

22 MR. SHENAO:

23 Q Mrs. Small, how were Howard's contributions related to  
24 the outcome of your husband's NFL concussion claim?

25 A He didn't have any contributions to the outcome. Our

1 claim and our settlement came from the second claim that you  
2 filed for Parkinson's, which was what he was finally diagnosed  
3 with. And the first claim was actually rescinded and a second  
4 claim was filed for the Parkinson's diagnosis.

5 So our outcome actually came from the work that you  
6 and your office did as far as finding out all of the medical  
7 history, and reviewing bills, documentation's on what was  
8 really going on with my husband. And that he had a  
9 Parkinson's diagnosis.

10 So I wouldn't say that Mr. Howard did anything. All  
11 of the doctors that he referred us to were called into  
12 question. And none of their information was actually used for  
13 our Parkinson's claim on that diagnosis.

14 MR. SHENAG: Thank you, Mrs. Small. And thank you,  
15 Your Honor. I have no further questions for Mrs. Small.

16 THE COURT: Mr. Howard?

17 MR. HOWARD: Just a few questions.

18 CROSS-EXAMINATION

19 BY MR. HOWARD:

20 Q Thank you, Ms. Small. Ms. Small, are you a client of  
21 Howard & Associates, or Shenag?

22 A My husband is a client.

23 Q But you're not a client, though, were you?

24 A But I help him in his day-to-day. I handle the medical  
25 issues that he has. So I'm very involved in his day-to-day

1 matters.

2 Q How much time did you spend with Mr. Shenag in preparing  
3 for today's testimony?

4 A How much time?

5 Q Um-hum.

6 A I have not -- we just discussed that we were going to  
7 have a hearing and that there -- we would have to give  
8 testimony as far as, you know, what our experiences were  
9 during this time.

10 Q Did you discuss these facts just presented with Mr.  
11 Shenag?

12 A Of course, we've discussed them during the course of this  
13 whole settlement process. This is all information that went  
14 on during the settlement process. Like I said, we had a  
15 serious communication issue with you, so all of our doctors'  
16 outcomes and all of that had to be discussed with Mr. Shenag.

17 Q And --

18 A And, Tim, I'm just gonna say this. I mean, you did not  
19 respond to us. You did not respond to communications that we  
20 had for your office. I mean, and when we had like questions  
21 for you, you didn't respond to those questions. We had no  
22 idea that our claim wasn't filed, that you hadn't filed it.

23 You had registered us, but you had never filed a  
24 claim when you told us that you would.

25 Q Did you --

1 A And that was in December of seventeen. And we didn't  
2 find out until we were with Mr. Shenag that there was a claim  
3 that had never been filed, and he had to file a claim on our  
4 behalf. And I think that is awful for you to have told us  
5 that you would file a claim for us, and you never did.

6 Q Did -- how did you get in touch with Mr. Shenag's law  
7 firm?

8 A I'm sorry?

9 Q How did you come -- how did you -- you're not the client,  
10 but actually attorney to Mr. Small. But how did -- how did  
11 Mr. Small come in contact with the Shenag law firm?

12 A We came in contact with him through your office, because  
13 you said that he would be assisting me. In that process, we  
14 found that he was actually the only one that we could contact  
15 that would give us accurate and true information.

16 You office had given us information that we were in  
17 a claim process, which was totally inaccurate, that our claim  
18 was doing well, and there was no claim filed. And that is a  
19 misrepresentation because you never filed a claim. And you  
20 actually gave us false information.

21 Q Do you know when the Shenag firm was retained by Mr.  
22 Small?

23 A When it was retained?

24 Q Correct. When Mr. Small entered into a contract with  
25 Amir Shenag's firm, and the Howard firm, do you know when that

1      took place?

2      A      I think it was 2018.

3      Q      All right. Do you know month that took place?

4      A      I'm not -- I don't have the documents in front of me.

5      Q      It took place --

6      A      I was aware of that information, but I don't have those  
7      particular documents in front of me.

8      Q      It took place in early May, late April of 2018. And do  
9      you know what -- what month Mr. Small ceased us as -- even  
10     though Amir Shenag works with and for me, by the way, you need  
11     to know that --

12                 MR. SHENAG: Objection, Your Honor. I don't work  
13     for Mr. Howard. That's completely false. I don't work for  
14     that man.

15                 MR. HOWARD: Yes. We have joint co-counsel, do you  
16     know we have a co-counsel relationship, Mr. Small and Mrs.  
17     Small?

18                 THE COURT: Well let's see -- let me see what the  
19     document says, if you would submit that, either one of you, I  
20     don't care, but submit that document to me and that might very  
21     well clarify it with me.

22                 MS. SMALL: I think we terminated his services in  
23     September of 2020, if I'm not mistaken -- I mean 2019, I  
24     apologize.

25     BY MR. HOWARD:

1 Q Correct. So that would have been a year and a half after  
2 we had been jointly representing you, is that correct?

3 A And let me just say this. The only reason -- my husband  
4 wanted to sever your services, and I was like, but you  
5 represented to him kind of like if he severs your services  
6 that we wouldn't have access to Amir anymore, because he was  
7 your employee, and he worked for you.

8 And that was a misrepresentation. Because we could  
9 secure his services. And you made my husband believe that  
10 without you, Amir wouldn't be there. And the only reason we  
11 had stayed there was because of Amir's services.

12 And his fantastic and exemplary communication with  
13 us, and the way that he handled our case. So I -- I don't  
14 think the time frame that we left was even a factor, because  
15 you misrepresented that, that he worked for you and pretty  
16 much that if we severed your services it would sever his  
17 services.

18 Q Did you not state the reason you left our services is  
19 because we were not providing care for you, and that's why you  
20 went with Amir Shenaq?

21 A I said there were multiple reasons that we left your  
22 services. And one of them was the fact that you, who were  
23 supposed to be our major attorney, would never return our  
24 calls or communications. And that, for me, is egregious.

25 Q Ms. Small, how many emails did you ever send me?

1 A How many emails? We sent --

2 Q Not -- Mr. Small I responded to, I'm talking about from  
3 you?

4 A I'm sorry? You sent email to my husband? It was --

5 Q No. My question is how many --

6 A -- to me because --

7 Q -- emails did you send me?

8 A No, you can't over-talk me in this.

9 Q (Inaudible)?

10 A You know that I assisted him in that. And you know that  
11 I was there, and you didn't respond to our communications, so  
12 much to the fact that one of the players had to suggest to you  
13 to give telephonic meetings to give us updates on what was  
14 happening on these cases.

15 And even on those telephone meetings nothing was  
16 relayed that was pertinent to the cases. And actually false  
17 information was given on those calls.

18 Q So you acknowledge that we had bi-weekly phone calls with  
19 all of our clients available to listen?

20 A I acknowledge that you had phone calls, I didn't  
21 acknowledge that we were on all of them.

22 Q And you know that --

23 A And that even on those calls misinformation was given to  
24 your clients. And on a few occasions you shared information  
25 about your clients that should never have been shared in that

1 environment. And being with a background of HR, I'm aware  
2 that personal medical information should never be shared in  
3 that environment, and you gave some of that information.

4 And then you asked when they were asking you --  
5 because multiple people that were clients of yours were on  
6 that, and that's when we realized that we weren't the only  
7 ones with issues regarding communication problems between you.  
8 Because there were multiple ones who had no response from you  
9 on where their medical information was, where their claims  
10 were, where they were in the process.

11 They had none of that information. And early on on  
12 those calls you started asking that people call you  
13 individually. And when those call -- after the total call,  
14 when they did that, they would come back and say that they  
15 never got in touch with you, which is the same issue we were  
16 having.

17 And so I was like, this is futile for us to keep up  
18 these communications, because this -- this doesn't make sense  
19 that our attorney is giving us fake and false information.

20 Q And isn't it true that Mr. Small wanted a discount on his  
21 fee?

22 A No. It was addressed that if they brought in clients to  
23 you, that you would give them discounts on their fee, which  
24 never occurred.

25 Q And isn't it true that --

1       A     And I was like that is -- and I said that is strange,  
2       because most attorneys don't discount fees. But you asked  
3       them to bring in additional players for your services.

4               Which, in fact, you only wanted to get them these  
5       loans so that you could invest them in your own personal get  
6       rich scheme. And that is egregious to me as an attorney, and  
7       you never represented to them that you were even a part of  
8       these funds, which was a conflict of interest on your behalf.

9               And you got out away from -- well over two thousand  
10      --

11              THE COURT: Ms. Small -- Ms. Small, he's asking a  
12      limited -- limited question. I appreciate your desire to get  
13      more information in, but I think we have -- I understand your  
14      allegations with respect to that. Proceed, Mr. Howard.

15      BY MR. HOWARD:

16      Q     And, Ms. Small, just on that subject, are you aware that  
17      I ceased all participation in that company in March of 2017?

18      A     Am I aware of what?

19      Q     I ceased all participation in that Cambridge company in  
20      March of 2017, only four months after you -- you signed up  
21      with us? Are you aware of that?

22      A     That is not the information that I saw in the research  
23      that we did, Tim.

24      Q     Correct. And that's why this is not public yet. Are you  
25      aware that there's settlements was taking place with the SEC

1 and --

2 A But those are things, there's still an issue that --

3 THE COURT: Ms. Small -- Ms. Small, I'm sorry, but  
4 you're responsibility is to answer his question, if you could,  
5 please?

6 MS. SMALL: Okay.

7 THE COURT: Go ahead.

8 BY MR. HOWARD:

9 Q That would be the question. So are you aware that I left  
10 the company in March of 2017.

11 A I was not.

12 Q Okay. And are you aware that the SEC claim is in the  
13 process of being dropped?

14 A I was not.

15 Q Are you aware --

16 A And that was the only reason that we secured your  
17 services -- or we terminated your services (inaudible) but it  
18 wasn't the only reason. And you are aware of that.

19 Q And is it true that you terminated my services within a  
20 week of us not agreeing to reduce our fee?

21 A That is incorrect.

22 Q Okay. And is it true that our communications were  
23 primarily with our client, Jesse Small, and not with you?

24 A That is incorrect.

25 Q And --

1 A Cases came from Jesse's email, which we were both there.

2 Q And we have submitted I think four hundred more pages --  
3 1800 total pages of our constant communication with Mr. Small  
4 and yourself.

5 A I have 400 pages of communication with my husband. If  
6 you have 400 pages, there was something added, because you did  
7 not communicate with us that often.

8 Q Well it's right in the record. And we were dealing with  
9 Mr. Small, not yourself?

10 A That is incorrect.

11 Q And you're aware that you received -- Mr. Small received  
12 an award letter as of May of 2019, is that correct? Are you  
13 aware of that?

14 A I'm aware that there was an award received. However,  
15 from the outline that they gave us of the case goes, it can go  
16 on appeal at any time, which it did. And it went into audit.  
17 And that at the point that it went into audit, that the award  
18 was rescinded. We actually did not get an award until late  
19 2019.

20 And that was after your services were terminated.

21 Q And you're aware the --

22 A We were in another audit process.

23 Q The May -- the May 2019 award letter was for Parkinson's,  
24 are you aware of that?

25 A It was not for Parkinson's.

1 Q And you are also aware that this firm brought Amir Shenaq  
2 to help with this case, that you did not seek Amir Shenaq out?

3 A I'm aware of that.

4 Q And you're aware that this firm was advancing your claim  
5 and finds good expertise to assist that is something that's  
6 appropriate for a law firm to do?

7 A Actually, you did not advance our claim. Amir advanced  
8 our claim. You didn't file a claim for us. There was no  
9 claim filed from you.

10 Q Where did -- how did --

11 A You served (phonetic) us in the settlement. And then you  
12 ceased communication with us and provided us no information as  
13 to how our case was moving forward. And you misrepresented  
14 that we have a claim filed when we did not.

15 Q The records show we did not cease communication, and do  
16 you -- excuse me, I don't want to be argumentative. You  
17 disagree with the forwarded pages of emails between just Mr.  
18 Small and ourselves, showing -- documenting communication?

19 A Tim, I can't tell how many pages there were. What I can  
20 tell you is that you did not provide us with any pertinent  
21 information regarding our claims case while it was moving  
22 forward, or, in that matter that you hadn't filed a claim on  
23 our behalf, which cost Jesse not to be able to get into the  
24 settlement at an earlier date and an earlier age.

25 Which has literally cost him money, because at an

1 earlier age that his claim could have been filed with a higher  
2 settlement, which could have possibly helped us further along  
3 with getting medical care for his medical issues.

4 And that, to me, as someone who's supposed to be a  
5 legal attorney, or legal authority, is egregious on your  
6 behalf.

7 Q And just to reiterate, you did not have any experience or  
8 knowledge of Amir Shenaq's firm until we brought his firm to  
9 assist?

10 A That's correct.

11 Q And then you did not seek out Amir Shenaq's firm, but we  
12 did?

13 A That is accurate.

14 Q Are you aware that Amir Shenaq's firm did not pay one  
15 penny towards your claim, that my firm paid for everything?

16 A That's actually inaccurate.

17 Q That Amir Shenaq got paid for testing?

18 A That's inaccurate.

19 Q Amir Shenaq did not pay for --

20 A You actually sent something saying that how much that was  
21 -- where we asked you what was, I think prior to us  
22 terminating your services, what fees we had. The only ones  
23 you gave us were the ones from Shamir -- I mean Amir, I'm  
24 sorry. And when you called us about that second investment  
25 when our daughter was in the hospital, you only made that call

1 because Jesse had contacted somebody to tell you that he was  
2 considering terminating your services.

3 And when you called us, you didn't even speak of the  
4 lack of services that you were providing, and the fact that he  
5 wanted to terminate your services, you took that opportunity  
6 to ask him about an investment.

7 Q Just for the record I never -- never -- never talked to  
8 Jesse about investments.

9 A And then you think (inaudible) something which would have  
10 no claim to because you didn't do anything.

11 Q Just for the record, there was no phone call between  
12 Jesse and I about investments, that's untrue. I'm not sure  
13 where it comes from.

14 MR. HOWARD: I have no further questions.

15 THE COURT: All right. Thank you. Mr. Shenaq, I'm  
16 tempted to preclude you from asking any further questions. Is  
17 there anything that you think that you absolutely must answer  
18 that would be new, that was brought out by Mr. Howard's  
19 questions?

20 MR. SHENAQ: Your Honor, I just want to make one  
21 quick statement in rebuttal in that the Smalls --

22 THE COURT: All right. I'm going to give you a  
23 opportunity to make statements in terms of argument. All  
24 right? When we get to the end of this.

25 What I need to address is the exhibit that makes

1 reference to costs. There's an exhibit that was provided, it  
2 is Exhibit E, I believe that was part of the exhibits that  
3 were provided by Mr. Howard. And can we get that one up  
4 Alisha?

5 THE CLERK: I don't think I have a copy of that.

6 THE COURT: It's part of Mr. Howard's exhibits.

7 THE CLERK: Right.

8 THE COURT: Exhibit E.

9 THE CLERK: Yeah, I only have a copy that has some  
10 writing on it.

11 THE COURT: I thought you guys worked that out this  
12 morning. No?

13 THE CLERK: I received another email, but I -- I am  
14 not seeing that exhibit. Maybe if one of the attorneys has it  
15 available right now they could email --

16 THE COURT: Let's do this. Let's do this. Let's  
17 have us our group go into a separate caucus. I'm going to  
18 take a five-minute recess, or a ten-minute recess. All right?  
19 If you want, I can put you, Mr. Shenag, in caucus with your  
20 client and separate out Mr. Howard, or you could all just be  
21 in your own caucus.

22 Jimmy, this going to be not part of the record.  
23 We're just going to take a break.

24 THE CLERK: Okay, Judge.

25 THE COURT: All right? For ten minutes.

1 (Court in recess 12:25 p.m.)

2 THE COURT: So let's, I mean, so you address -- and  
3 this is to Mr. Howard -- Exhibit E, which is some -- what  
4 appears to me to be some kind of a worksheet with some  
5 information. Alisha, if you could put that up on the screen?

6 So, Mr. Howard?

7 MR. HOWARD: Yes, Your Honor. This deals with my  
8 Dr. Wisdom, Dr. Bertelson, Dr. Evans, neurology. Ground  
9 transportation via cab fare; neuro psych costs \$2,500; air  
10 fare getting Mr. Small there, back and forth; hotel costs. It  
11 deals also with Dr. Lloyd and Dr. Morgan's work up, and Dr.  
12 Sadek's work up, Charges of Dr. Koberta and his work up as  
13 well. At the time all of them were MAF certified doctors.

14 Dr. Barker's -- the Nurse Barker's (inaudible)  
15 reading, and an MRI that was done by MRI Health Imaging, which  
16 was just to see if there's any -- that we can find from the  
17 MRI to see if there's any damage to the brain and to document  
18 through the MRI.

19 THE COURT: All right. Can you supplement this by  
20 giving us dates, the dates of these examinations might --  
21 might have some relevance.

22 MR. HOWARD: Yes, I -- I can do that, I don't have  
23 it in front of me. But the work with Wisdom, Bertelson and  
24 Evans I would think would take place sometime in 2019, maybe  
25 the latter part of 2018. Sadek and Morgan would have been

1       sometime in mid or the late twenty eight -- 17.

2               Koberta would have been probably early 2017. The  
3       MRI would have been early 2017 if we found anything with brain  
4       damage. And when we did the MRI's we found some players with  
5       brain cancers and tumors, and we found some -- some -- we  
6       could verify some denigration of certain parts of their lobes.  
7       That's why we did the MRI on some clients that were more  
8       severe.

9               And Nurse Barker CDR -- also charged for the CDR.

10              THE COURT: All right. So the reference on the far  
11      right starting with Laurie Morgan, I mean, there's a --  
12      there's an obvious break there, as you can see.

13              MR. HOWARD: Correct.

14              THE COURT: And on the lower half of the break, it  
15      looked -- I presume H ampersand A is Howard & Associates?

16              MR. HOWARD: Correct.

17              THE COURT: That has -- but that has to do with work  
18      done prior to Mr. Shenag's affiliation with you?

19              MR. HOWARD: Correct. These -- they were done prior  
20      to April of 2018, and Mr. Shenag would have been after April  
21      of 2018.

22              But we were working together. And, Your Honor, I  
23      didn't -- we're still operating under the same contract. I  
24      don't think that the client has entered into a new contract  
25      with Shenag, I think it's under our same contract.

1 THE COURT: All right. Well I want to ask you to  
2 produce that contract. You can just, you know, send it to me.

3 MR. HOWARD: That -- it was done in a -- in the  
4 DocuSign format, and I'm not sure that I have it in my email.  
5 I know Mr. Shenag has it. But I have to look for the  
6 DocuSign, I'm not sure we have it in the One Drive. But we'll  
7 look into it now.

8 THE COURT: All right. Mr. Shenag, do you have it?

9 MR. SHENAG: Yeah. Can you clarify which contract  
10 you're referring to? Because I'm unclear as to what -- what  
11 Mr. Howard is referencing on the front of the contract.

12 THE COURT: Well what I'm referencing is that there  
13 was in the -- in the presentations made, I can't cite verse  
14 and rhyme at this point, but in the presentations made that  
15 there was some kind of an arrangement between the two of you  
16 when you came in in April of 2018. And I asked the questions  
17 to one or the other of you, with whether or not that was  
18 (inaudible) and I got a positive response.

19 So I wanted to see what the writing was in term -- I  
20 meant it to be, or I thought it to be some overall arrangement  
21 between the two of you as to how you, Mr. Shenag, would be  
22 compensated for the work and effort that you undertook during  
23 the time that you were, up until September 2019, during the  
24 time that you were associated with Howard & Associates on this  
25 case.

1 MR. SHENAG: Yes, Your Honor. And, you know, before  
2 we were able to undertake efforts with representation of any  
3 client who is a -- you know, currently represented, they have  
4 to sign a consent to associate document. That document sets  
5 forth the applicable fee percentages that are attributable to  
6 each firm at the time that that writing was signed, before our  
7 firm can commence any work.

8 And that document had to be signed by Mr. Small, and  
9 he obviously had to consent to our association and us doing  
10 any work on his case before --

11 THE COURT: That's apparently the document I need to  
12 see.

13 MR. SHENAG: Okay.

14 MR. HOWARD: Your Honor, just to clarify, there are  
15 two documents. One is our co-counsel internal document, joint  
16 prosecution document where we share -- we determine fee  
17 division internally, and I'm happy to share that. I may need  
18 to get a waiver from either Mr. Shenaq or -- to do that.

19 And then we have, of course, the co-counsel document  
20 with the client where we have signed that through DocuSign.

21 THE COURT: Okay. But what I want is what you guys  
22 have and you're relying upon. And it's a little bit  
23 different, and I presume Mr. Shenaq will get authority from  
24 his client to be able to have this reviewed.

25 And then that will be helpful. Now going back to

1 the -- and, by the way, what you can do is just give me -- you  
2 can send it to the -- to my Chambers. You can send it  
3 electronically, and you can use the Strawbridge Chambers email  
4 address, which I think you folks have used before, you're  
5 familiar with. [Strawbridgechambers@gaed.uscourts.gov](mailto:Strawbridgechambers@gaed.uscourts.gov). I  
6 presume you're familiar with that and the suffix following the  
7 at. So that's where I'd like to have this submitted.

8 And then I will just have it incorporated into the  
9 record here. So one of the -- I had to take note that we  
10 understood, Mr. Howard, that your claim for costs was a sum of  
11 \$16,750. But I believe that's in one of the narratives. And  
12 obviously more or less \$11,000 less than what appears on the  
13 papers.

14 MR. HOWARD: If we go by the documents here, I think  
15 the 16,000 would have been my firm's portion, and the other  
16 would have been the rest of it. So the total amount of costs  
17 is 47,689, of which my firm paid for all of it.

18 THE COURT: All right. So, Mr. Shenaq, do you  
19 accept that representation?

20 MR. SHENAQ: To some degree, Your Honor. Our firm  
21 did incur all of the costs starting from neurology 1,100, and  
22 going up towards that page of their Exhibit E. Howard &  
23 Associates did reimburse our firm for all of those costs  
24 incurred pursuant to a co-counsel agreement that we had.

25 However, it's our position that Howard & Associates

1 has also materially breached that document, although that's,  
2 you know, may not be particularly relevant to your analysis,  
3 but that is our position on this larger co-counsel document.

4 MR. HOWARD: And, Your Honor, if I may -- that's the  
5 first I've heard of any repudiation. I will let my counsel  
6 know that that's their position, and I think that starts a  
7 lawsuit between us. I did not know that that was the position  
8 of Mr. Shenag until this very moment.

9 MR. SHENAG: We have made representations to Mr.  
10 Howard, Your Honor, on a number of occasions that they've been  
11 in material breach of a co-counsel document.

12 THE COURT: Well I'm going to leave that to you guys  
13 separately. The last thing I want to do is to be in the  
14 middle of a dispute between the two of you that is not  
15 directly related to the proceeding that would be associated  
16 with securing the award for the benefit of Mr. Small.

17 So, Mr. Shenag, are you -- you see the document and  
18 you recognize the part -- the top half of it I'll say, it's  
19 not exactly half, but the top half of it where your name is  
20 attached to two or three or more expensive items.

21 These -- do you recognize them as all costs that  
22 look like they were costs that were undertaken during the time  
23 when you apparently from -- it was after the April of 2018,  
24 you apparently had associated at this point with Howard &  
25 Associates and you had taken over a lot of responsibility as

1 Ms. Small articulated in her testimony.

2 You were carrying the -- you were carrying ball  
3 forward up until September of '19 when you did it on your own  
4 account after he was terminated?

5 MR. SHENAG: Yes, Your Honor, that's correct. And  
6 every cost included is to the penny, the exact penny dollar  
7 amount that we've incurred with respect to each of those line  
8 items.

9 THE COURT: All right. Well you -- maybe you have  
10 to be involved in the updating of that particular document, at  
11 least with respect to dates and the nature of service. I  
12 mean, I can -- I find out the nature of service, I recognize  
13 the names of the physicians.

14 So, okay. All right. Okay.

15 I'm ready to hear argument. I'm frankly not sure I  
16 need a whole lot of argument. We've had sort of argument  
17 throughout the course of the -- during the course of the  
18 hearing off and on. But, Mr. Howard, let me give you a  
19 opportunity to go first.

20 MR. HOWARD: Your Honor, there's no dispute that  
21 this firm has paid for all the costs. The notice that this  
22 firm brought on Amir Shenaq in April of 2018, there's no  
23 dispute that we have provided services. There's no dispute  
24 that the doctors that did these workups were MAF certified and  
25 qualified on the NFL program.

1           There's no dispute that we communicated regularly  
2       with the client. There's no dispute that our services were  
3       provided, and there's no dispute that there's regular  
4       communications as documented in the file.

5           There's no dispute that, but for our participation  
6       and guidance in the case, there would be no recovery for this  
7       client. There's no dispute that the client received a great  
8       award in large part thanks to our guidance. And that being  
9       the process, as the NFL claims process has gone through  
10      various iterations, through change, and the standard has  
11      changed quite a bit over the past 30 months.

12           THE COURT: How -- how long?

13           MR. HOWARD: Thirty months.

14           MR. SHENAQ: Thirty months, right.

15           MR. HOWARD: And whether it's the Heaton principle,  
16      more that they just showed up, or whether it's the how we  
17      measure the -- the medical reviews, the independent medical  
18      reviews, so there's a lot of nuances in it that we've helped  
19      navigate through.

20           And in fact prior to the past eight -- over the past  
21      seven months, eight months ago we were on regular calls with  
22      Amir Shenaq regarding the claims and cases. There was no  
23      dispute amongst the parties. This -- this current break-up  
24      only took place over the past -- at some time around September  
25      or October of last year.

1           So during the operative time of Mr. Small's claim,  
2           we were actually working almost daily with Shenag and his  
3           staff organizing meetings, getting updates on medical reports,  
4           providing information to the client.

5           There really is no separation between this firm and  
6           Shenag when it comes to joint prosecution of cases. And that  
7           contract, whether it's with the Smalls or with jointly has not  
8           been repudiated. And the best I can tell there's not a  
9           separate with Amir Shenag and the Smalls, they're still  
10          operating under my contract with Amir -- with Mr. Shenag and  
11          the Smalls.

12          And I didn't know until this past ten minutes that  
13          Shenag is now saying we don't have a joint co-counsel  
14          agreement. So I'll inform my counsel we're now in conflict.  
15          We'll take care of that. But as far as the benefits to the  
16          client, the success speaks for itself, the joint work speaks  
17          for itself, the fact verified just a moment ago that we paid  
18          for all costs speaks for itself. And this really comes down  
19          to what really happened here, as we would not give a discount  
20          to Mr. Small or Mr. Guyton on the fee, and that -- when that  
21          was done, that is why they ceased the representation in  
22          September of 2019, five months after the May 30th award of the  
23          Parkinson's award of 1.9 million.

24          And that took place May 30th of 2019 during our  
25          operative time while we were jointly co-working on the file.

1 I don't think the Smalls realize that when they were talking  
2 with Amir Shenaq's firm, they were talking with my firm. When  
3 they talked with his staff, they're talking with my staff.

4 My staff was regularly dealing with Mr. Small,  
5 whether Harrison Smith, Tom Woods. We had bi-weekly phone  
6 calls to make sure they were informed. We had break-out calls  
7 on each of that. Basically this entire process is a coached  
8 smoke upon smoke, inference upon inference in order to  
9 maximize cash in people's pockets.

10 And let's get to the truth, and let's get this claim  
11 processed, and let's get the people paid based on the  
12 contract.

13 THE COURT: Mr. Shenaq?

14 MR. SHENAQ: Your Honor, I think it's really  
15 important to focus on the law here that guides the Court in  
16 determining how an attorney related dispute is to be decided.  
17 As Your Honor has indicated multiple times now, and most  
18 recently in your June 4th opinion, the Court is guided by the  
19 principles of McKenzie in determining how an attorney dispute  
20 is to be decided.

21 And of particular importance, especially in this  
22 case, Your Honor, the opinion also held that a private  
23 agreement amongst attorneys was not relevant when it comes to  
24 the analysis and the application of the McKenzie principles.  
25 Looking at the McKenzie factors in, you know, specifics, you

1 know, there are a number of key considerations.

2 The first of which was the reasonableness of the  
3 attorney fee contract at the time the contract was entered  
4 into, and any other circumstances at that time. Contrary to  
5 Mr. Howard's assertion, the Smalls did terminate his services  
6 on September 20th, 2019 and entered into a new fee agreement  
7 with my firm on September 20th, '19.

8 The fee percentage that the Smalls agreed to pay my  
9 firm was identical to what they agreed to pay Mr. Howard in  
10 2016. This was not a termination related to financial aspects  
11 or refusal to provide a reduction in fees as Mr. Howard  
12 asserts. It was a fee premised on the work that my firm  
13 performed, the risks that we undertook to go through an audit  
14 process that was triggered primarily by the acts of prior  
15 counsel.

16 We had to potentially stave off an NFL appeal.  
17 There were also obviously risks in the fact that prior counsel  
18 may assert a lien, that Your Honor has acknowledged is a real  
19 risk. And, moreover, Mr. Howard's third-party creditors have  
20 also threatened to come after me to potentially take any fee  
21 award that my firm may be entitled to.

22 These are not risks that any client should have to  
23 face, and I'm certain very few lawyers would have been willing  
24 to undertake the representation of Mr. Smalls (sic) under all  
25 of these circumstances. Mr. Small did not receive a monetary

1       award until after the Smalls terminated Howard & Associates,  
2       and even then we still face the opposition -- potential  
3       opposition of an NFL appeal. As Your Honor noted, requires  
4       skilled advocacy in order to defend an appeal.

5               We were very ready, willing, and able to defend that  
6       appeal, like we've done in many instances. And this was no  
7       different exception. Moreover, Your Honor, the fee percentage  
8       that we've -- that the Smalls agreed to pay our firm is well  
9       within the presumptive fee cap that this Court has deemed to  
10      be presumed reasonable under the circumstances.

11             And, in addition, the Smalls had a opportunity, and  
12      an express acknowledgment that in my firm's fee contract they  
13      have the ability to negotiate the fees, and the fees are  
14      negotiable. The Smalls sought out my firm and my assistance,  
15      and were gladly able to pay my firm 20 percent to correct all  
16      of the wrongs that were, you know, performed by prior counsel,  
17      to put them in a position to be able to obtain benefits out of  
18      the settlement.

19             With respect to the second factor, Your Honor, that  
20      this Court looks into, the result obtained in the case, it  
21      sort of speaks for itself. Mr. Small got diagnosed with the  
22      highest possible diagnosis given his medical condition, at the  
23      earliest possible age in which my firm became aware of his  
24      condition.

25             I don't know of any better results. He obviously

1 received an award in excess of \$1.5 million. We were able to  
2 successfully negotiate third-party liens to save the Smalls  
3 almost \$100,000, Your Honor, with lenders who were actively  
4 seeking to litigate against Tim Howard.

5 If Mr. Howard was still involved in the Smalls'  
6 case, the lender would have never agreed to reduce Mr. Small's  
7 lien with respect to the funding that they took from Preferred  
8 Capital. I don't know of any other direct evidence that shows  
9 the prejudice that Mr. Howard's involvement has caused the  
10 Smalls, Your Honor.

11 In addition to that, we've also helped Mr. Small  
12 secure Plan 88 benefits due to his Parkinson's diagnosis.  
13 That provides the Smalls with a guarantee of approximately  
14 \$130,000 of annual benefits towards in-home care for his  
15 severe cognitive condition, Your Honor.

16 Moreover --

17 THE COURT: Is that \$130,000 per year?

18 MR. SHENAQ: Per year, Your Honor. Plan 88 because  
19 of his Parkinson's diagnosis. In addition to that, Your  
20 Honor, with respect to the other element, you know, the  
21 respective contributions towards the underlying outcome, it's  
22 abundantly clear, even by looking at the expense record  
23 itself, there's a clear delineation when Howard & Associates  
24 firm stopped actively doing any sort of work on Mr. Small's  
25 case. And the work that they engaged in prior to 2018 in and

1 of itself was suspect and created a detriment to Mr. Small  
2 getting his second claim through the process.

3 So I don't see how under any circumstance that his  
4 work could be associated with the outcome of this case, Your  
5 Honor.

6 So, you know, in that sense we strongly believe,  
7 Your Honor, that our firm should be entitled to the entirety  
8 of the attorney's fees, Howard's firm's lien that should be  
9 discharged in its entirety. And only those costs which Your  
10 Honor deems reasonable should be returned to Mr. Howard.

11 It's our position that there are very few costs in  
12 that Exhibit E that warrant reimbursement to Mr. Howard.  
13 Inappropriate medical experts should not be reimbursed to the  
14 firm. It's unreasonable to rely on experts whose opinions  
15 could never support a claim, and seek to be reimbursed for  
16 that -- for those expenses.

17 The attorney should have known better. The  
18 settlement agreement is very clear regarding the credentials  
19 that a doctor needs to have. And if one simply read the  
20 document, Your Honor, you know, which is a basic tenet of  
21 being an attorney, they would know what type of medical expert  
22 would be appropriate to engage in this particular matter.

23 THE COURT: All right. Thank you. Now I do want  
24 to --

25 MR. HOWARD: One quick rebuttal.

1 THE COURT: Yes.

2 MR. HOWARD: If you look at Exhibit F, and the date  
3 is Wednesday, September 19th, 2019. This is from Jesse Small,  
4 I'm still representing him. And he says -- he's asking me to  
5 consider dropping their fees. He says there was the mention  
6 of a possible modification.

7 "Please keep me in the circle of the possibly  
8 modifications addressed to referrals. Thank you for all the  
9 work you have put in this far. The (inaudible) probably  
10 caused your constant calling and worries."

11 It means we're communicating.

12 "I look forward to cross the finish line together."

13 We could not modify the fee. This is September  
14 19th, 20 --

15 MR. SHENAQ: 2018, Your Honor.

16 MR. HOWARD: And we couldn't do it, and eventually  
17 he dropped us because we wouldn't modify the fee.

18 MR. SHENAQ: Your Honor -- Your Honor, that  
19 statement is disingenuous because that email was sent 2018,  
20 not 2019 as Mr. Howard is trying to make the Court believe.

21 MR. HOWARD: Your Honor that is correct, it is 2018,  
22 Your Honor. I misread that. But that's the issue that caused  
23 the separation. Thank you, Your Honor.

24 THE COURT: All right. So I want to say a couple of  
25 things. First of all, I am presuming neither of you believe

1     that your client should pay -- your client should be  
2     responsible for more than 20 percent for attorney's fees,  
3     regardless of which attorney -- what portion of the 20 percent  
4     goes to which particular attorney.

5             This is an exercise for me -- and I want Mr. Small  
6     and Ms. Small to, you know, clearly understand, they've  
7     already -- they've gotten the award as I understand it now,  
8     it's backed, all those provisions have been made -- is that  
9     there's nothing that I'm going to do here that's going to have  
10    any impact upon the question with respect to the award that  
11    has been provided. This only has to do with, and Mr. Shenag  
12    has articulated it, and his advocacy position that the league  
13    should not be honored at all for the reasons that he  
14    articulated.

15            Mr. Howard has presented his own position by virtue  
16    of the way that he's interpreted the law and what he believes  
17    happened during the time where from the beginning when Mr.  
18    Small was first retained in December of 2016, up until  
19    September of 2019, a lot of things -- yes, there were lots of  
20    problems along the way. But once you got to September of  
21    2019, you were practically there, across the goal line, close  
22    to the goal line, whatever. So I get it.

23            From my position, my responsibility is to sort all  
24    this out against the background of what it is that you folks  
25    have articulated in your argument. So I'm going to ask you

1 for the further documentation that I asked you to address,  
2 both with respect to the costs and with respect to the  
3 document or documents between Mr. Small and Mr. Shenag, and  
4 between Mr. Small -- between Mr. Shenag and Mr. Howard and  
5 whether or not it makes a difference in terms of how this  
6 analysis ends up is -- it seems to me it might, I think it is  
7 -- there's some relevance to that.

8 I'm not going to remember back to exactly what I  
9 said in my June opinion, Mr. Shenag, but I think they may have  
10 some relevance, this is a pretty unique -- pretty unique  
11 situation for me anyway. You guys have been involved in this  
12 situation a lot, but not -- not me at least that has gotten to  
13 the point where the lawyers have so vigorously felt the need  
14 to have me for their position. So thank you very much for  
15 your participation.

16 This is a very serious issue, obviously, between  
17 these two lawyers. But I have felt since the beginning and  
18 getting involved in this, and learning about Mr. Small, that I  
19 was probably one of the 60,000 people that were in the stands  
20 in Philadelphia when Mr. Small was in the -- in the 1989 team,  
21 and the Buddy Ryan teams, and all that -- and Cunningham's  
22 involvement. So I'm sure he was one of the people on the  
23 field that I was clapping for.

24 So thank you very much. You will hear from us in  
25 due course. I'm cautioned by my folks not to put any

1 particular time line on it. But this is, you know, it's fresh  
2 in our minds and we'll do our best to try to sort through  
3 this. So thank you very much for your participation.

4 Jimmy Cruz, we are now adjourned.

5 (Proceedings concluded at 1:02 p.m.)

6 \* \* \* \* \*

7 **C E R T I F I C A T I O N**

8 We, Roxanne Galanti, Josette Jones and Brenda  
9 Boulden, court approved transcribers, certify that the  
10 foregoing is a correct transcript from the official electronic  
11 sound recording of the proceedings in the above-entitled  
12 matter.

13  
14 /s/Roxanne Galanti

15 ROXANNE GALANTI

16  
17 /s/Josette Jones

18 JOSETTE JONES

19  
20 /s/Brenda Boulden

07/27/20

21 BRENDA BOULDEN

DATE

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